United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-7386

United States Court of Appeals

For the Second Circuit.

Docket Nos. 76—7386, 76—7393, 76—7417 and 76—74[illegible]

VANA TRADING CO., INC.,
Plaintiff-Cross-Appellant-Appellee,

against

S.S. "METTE SKOU," her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,
Defendant-Third-Party Plaintiff-Appellant-Appellee,

against

OVE SKOU and INTERNATIONAL TERMINAL OPERATING CO., INC.,
Third-Party Defendants-Cross-Appellants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

B P/S

APPENDIX.

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November 10, 1976

United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York 10007

YOUR REF:

OUR REF:

Attention: The Clerk of the Court

Re: Docket Nos. 76-7386, 76-7393,
76-7414, 76-7446

Dear Sir:

Please be advised that we represent Flota Mercante Grancolombiana, S.A., the defendant and third-party plaintiff-appellant-appellee in the above docketed appeals.

Following the filing of the Joint Appendix in relation to the above docket numbers, it came to our attention that certain transcript pages were inadvertently left out of the Joint Appendix. These transcript pages were numbers 381 through 389 and were referred to by the defendant and third-party plaintiff-appellant-appellee in its main brief, already submitted to this Court on pages 5, 7, 21, 22 and 27 therein. After discussing the matter with one of the associate clerks of the Court and the attorneys for all of the other parties involved, it was recommended that the omitted pages be printed separately and inserted at the end of each appendix by hand with only a transcript page designation and no appendix page designation.

We thank you for your consideration and cooperation in this matter.

Very truly yours,

GIALLORENZI & STILES
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Grancolombiana, S.A., Defendant &
Third-Party Plaintiff-Appellant-Appellee

RAS/if

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

(Docket Nos. 76-7386, 76-7393, 76-7417 and 76-7446)

- -X

VANA TRADING CO., INC.,

Plaintiff-Cross-Appellant-Appellee,

-against-

SS. "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendants-Third-Party Plaintiffs-Appellants-Appellees,

-against-

OVE SKOU and INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third-Party Defendants-Cross-Appellants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

Date	Proceedings
1975	
3-14	Filed complaint and issued summons.
3-24	Filed Summons with Marshal's Return. Served Flota Mercante Grancolombiana, etc. by Henry Ritter on 3/ /75

DOCKET ENTRIES

Date	Proceedings
6-6	Filed ANSWER of Deft. Flota Mercanta Grancolombiana RCG
6-13	Filed Deft. & 3rd pty pltff. Flota Mercante Grancolombiana's 3rd pty summons & Complaint
6-30	Filed CERTIFICATE OF MAILING by REGISTERED MAIL of Summons & Complaint addressed to: OVE SKOU H.C. Anderson s Blvd 44-46 D.K.1553 Copenhagen, Denmark- #317692 6-30-75 return.
8-8	Filed ANSWER to 3rd pty complaint & counter-claim by 3rd pty deft. HGP&H
8-11	Filed Pltffs Notice to take deposition of Sr. Arturo Mejia Diaz.
8-11	Filed 3rd pty Deft. Notice of exam. before trial and notice to produce documents of Deft & 3rd pty pltff.
8-28	Filed 3rd pty Deft. Ove Skou AMENDED COUNTER CLAIM AGAINST 3rd pty pltff. HGP&H
9-3	Filed Stip & Order that deft & 3rd pty pltff may implead Universal Maritime Services, Inc. as 3rd pty deft by filing suppl. 3d pty Summons & Complaint. Pollack, J.
9-9	Filed Stip & Order extending time for deft & 3d pty pltff to interpose a reply to all 3rd pty counter-claims to 9/15/75. Pollack, J.
9-19	Filed Deft & 3d pty pltffs Suppl. 3d pty complaint. Issued Summons.
10-8	Filed Suppl. Summons with Marshal's Return. Served Universal Maritime Services, Inc. by Robert Voso on 9/30/75
10-20	Filed Stip & Order of Partial Discontinuance that 3rd pty action against Universal Maritime Services, Inc. be discontinued without costs, pursuant to Rule 41(a)(c) Pollack, J.

DOCKET ENTRIES

Date	Proceedings
10-30	Filed ORDER. Deft & 3d pty pltff Flota Mercante Grancolombiana, S.A. may file a suppl. 3d pty Summons & Complaint; time for deft & 3d pty pltff to file said Suppl. 3d pty Summons & Complaint extended to 11/21/75. Pollack, J. (mn)
11-13	Filed Deft & 3rd pty pltff. Suppl. 3rd pty summons & complaint. Summons issued.
11-28	Filed Suppl. 3d pty Summons with Marshal's Return. Served Intnl Terminal Operating Co. by A.P. Cerrachio on 11/14/75
12-9	Filed Deft & 3rd pty pltff ANSWER to Amended Counterclaim. RCG
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1-16	Filed 3rd pty deft. International Terminal Operating Co. Inc. ANSWER to suppl. 3rd pty complaint and counterclaim. HRCL&O
1-14	Pre-trial before Pollack, J.
1-21	Filed Defts & 3rd pty pltffs ANSWER TO COUNTER-CLAIM. RCG
1-30	Filed 3rd pty deft. Ove Skou Notice to take deposition of Chief Mate of M.S. Mette Skou.
2-2	Filed 3rd pty deft. Ove Skou interrogs to Defts & 3rd pty pltffs.
3-5	Filed Pltff's response to notice to produce.
3-31	Filed "notice that deft & 3rd pty pltff & 3rd pty defts produce & permit to inspect & copy documents as indicate.
5-13	Pre-trial before Pollack, J.
5-13	Filed 3rd pty deft. Ove Skou demand for production of documents from pltff on 5/17/76, 10:00 A.M.

DOCKET ENTRIES

Date	Proceedings
5-13	Filed ANSWERS OF Deft & 3rd pty pltff to interrogs propounded by 3rd pty deft. International Terminal Operating Co. Inc.
5-17	Trial before Pollack, J. with non-jury.
5-17	Trial begun.
5-18	Trial contd.
5-19	Trial contd.
5-20	Trial contd. and concluded. Judge's Decision. 3rd pty complaint of Flota against Ove Skou is dismissed on merits with costs & counsel fees to be fixed & entered in Judgment. Separate Judgment on such dismissal is to be entered pursuant to Rule 54(b)FRCP. Flota is held liable to pltff to extent of comparative fault. I.T.O. is held liable to Flota to extent of it's contributory fault. Parties are to endeavor to agree on dollar degree of respective fault. Failing to report such agreements by 6/1/76. The Court will fix appropriate damages. Foregoing in addition to agree findings proposed by parties and submitted prior to trial shall constitute Court Findings of Fact & conclusions of Law as required by Rule 52(a)FRCP. So Ordered. Pollack, J.
6-16	Pre-trial before Pollack, J.
7-9	Filed OPINION #44733. Judgment of dismissal is to be entered on behalf of Ove Skou as against Flota and it shall recover its expenses and counsel fees. Pltff, Van Trading shall recover against Flota, sum of $39,179.25 with costs to be taxed and Flota in turn shall recover against I.T.O., sum of $1,000 with costs to be taxed. Pollack, J. (mn) to M A
7-12	Filed Stip & Order without prejudice to rights of appeal from all adverse rulings of Court as to any party, etc. as indicated. Pollack, J.
7-7	Pre-trial before Pollack, J.

DOCKET ENTRIES

Date	Proceedings
7-13	Filed JUDGMENT #76,673. Ordered that 3rd pty complaint as to 3rd pty deft. OVE SKOU is dismissed, and same recover its expenses, etc.; Ordered that pltff have judgment against deft. Flota Mercante Gran-Colombiana, S.A. in amt of $39,179.25 with costs to be taxed/Ordered that deft/3rd pty pltff Flota Mercante Grancolombiana, S.A. have judgment against 3rd pty deft. International Terminal Operating Co. Inc. in amt of $1,000, with costs to be taxed. Clk. (mn) Ent. 7/14/76
7-13	Filed Pltff's Proposed Findings of Fact & Defts' & 3rd pty pltffs' counter proposed findings of fact.
7-13	Filed Trial Memorandum of Third-Party Deft, Ove Skou.
7-13	Filed Trial Brief of 3rd pty deft. International Terminal Operating Co. Inc.
7-13	Filed Memorandum of Law submitted on behalf of Deft & 3d pty pltff Flota Mercante Grancolombiana S.S.
7-13	Filed Pltff's trial brief.
7-13	Filed Deft & 3rd pty pltff/s proposed findings of ultimate facts as between itself & 3rd pty defts in accordance with 65 F.R.D. 475, 481.
7-19	Filed transcript of record of proceedings, dated 5/18/76
7-19	Filed transcript of record of proceedings, dated 5/19/76
7-22	Entered Bill of costs 5/19/76 in amt of $451.21 on Judg #76,673
8-6	Filed deft & 3rd pty pltff Flota Mercante Grancolombiana, S.A. Notice of Appeal from decision, order, findings & conclusions dated 7/9/76 and Judgment filed on 7/13/76 (Mailed copy to Purrington & McConnell, Haight, Gardner, Poor & Havens & Hill, Rivkins, Carey, Loesberg & O'Brien, Esqs on 8/9/76)

DOCKET ENTRIES

Date	Proceedings
8-6	Filed Bond in sum of $250. (Aetna Insurance Company)
8-11	Filed Pltff's Notice of Appeal from Final Judgment of 7/16/76 with respect to limiting Judgment in favor of pltff against deft & 3rd pty pltff to $39,179.25 (Mailed copy to Renato C. Giallorenzi, Haight, Gardner, Poor & Havens, Esqs on 8/16/76)
8-20	Filed 3rd pty deft. Ove Skou Cross Notice of appeal from Findings & opinion on 7/9/76 and Final Judgment on 7/13/76 awarding judgment in favor of pltff & limiting judgment against International Terminal Operating Co. Inc. to $1,000. (mailed copy to Renato C. Giallorenzi, Hill Rivkins Carey Loesberg & O'Brien & Purrington & McConnell on 8/20/76)
8-24	Filed 3rd pty deft. International Terminal Operating Co. Inc. Notice of Appeal from Findings & Opinion of 7/9/76 & Final Judgment of 7/13/76 re: Awarding judgment in favor of pltff; awarding judgment in favor of 3rd pty deft. Ove Skou; and awarding Judgment against International Terminal Operating Co. Inc. in amt of $1,000.00 (Mailed copy to Haight, Gardner, Poor & Havens, Renato C. Giallorenzi & Purrington & McConnell Esqs. on 8/25/76)
9-7	Filed Notice that the Record on Appeal has been Certified and Transmitted to the U.S.C.A.
9-17	Filed Notice that the Record on Appeal has been Certified and Transmitted to the U.S.C.A.

STIPULATION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VANA TRADING CO., INC.,

Plaintiff,

v.

THE SS MEETA SKOU, her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendant and Third-Party Plaintiffs,

v.

OVE SKOU and INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third Party Defendants.

75 Civ. 1278(MP)

STIPULATION

It is hereby stipulated and agreed by and between the undersigned attorneys for the parties herein, without prejudice to the rights of appeal from all adverse rulings of the Court as to any party, including the allocations of fault implicit in the following liquidations, that

(1) the total loss was $78,358.50 and

(2) it cannot be determined from the evidence the degree of fault allocable to each party and, in accordance with the rule of damages as stated by the Court at the trial of this case, the parties consent to divide the damages equally subject to appeal and

STIPULATION

(3) which results in recovery by plaintiff of $39,179.25 against defendant, Flota and defendant Flota is entitled to a recovery of $1,000.00 against International Terminal Operating Co., Inc.

DATED: New York, New York
July 7, 1976

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So Ordered:

_____
U.S.D.J.

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FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

VANA TRADING CO., INC.,

Plaintiff,

v.

S.S. "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendants and Third Party Plaintiffs,

v.

OVE SKOU and INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third Party Defendants.

75 Civ. 1278(MP)

#44733

----------x

FINDINGS AND OPINION

MILTON POLLACK, District Judge.

FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

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FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

MILTON POLLACK, District Judge.

This admiralty cargo suit was brought by Vana Trading Co. (hereinafter "Vana") against the S/S Mette Skou and its time-charterer, Flota Mercante Grancolombiana S.A. (hereinafter "Flota") for alleged damage and loss to a shipment of 5,000 cartons of Colombian yams. Flota impleaded the owner of the vessel, Ove Skou, and the stevedoring company at New York, International Terminal Operating Co., Inc. (hereinafter "I.T.O.") as third party defendants.

The S/S Mette Skou was time chartered by Flota from her owner, Ove Skou, on a Time Charter form approved by the New York Produce Exchange, with some changes, which was dated April 26, 1974.

The yams in question were shipped late in the season from Colombia, South America. They had matured in November or December 1973, months before shipment, but were not shipped at that time. Instead, they were allowed to remain in the ground from November or December 1973 until they were harvested in March 1974. After harvesting, they remained in the storage sheds before they were finally packed into the cardboard cartons used for shipping.

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FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

On June 15, 1974, the yams were individually wrapped in unprinted newspaper and packed into the cardboard boxes which contained only two hand holes and a slit for ventilation. The yams were trucked to Cartegena, Colombia. After storage in a government warehouse, they were brought to the pier on June 18, or 19, 1974, subsequent to the vessel's arrival.

When the Mette Skou arrived at Cartegena, the Charterer informed the vessel's officers that the Charterer had booked 5,000 cartons of yams. At that time, only the deep tanks on the vessel were empty and available for cargo. The shipper examined the deep tanks and the ventilation system which serviced the deep tanks, and did not object to the storage of the yams in the deep tanks.

At the time that the yams left Cartegena, Colombia, defendant Flota delivered to the shipper's forwarding agent a bill of lading numbered 1, dated at Cartegena, Colombia, June 1974 and signed by Flota's authorized Cartegena Agents, which recited receipt in apparent good order and condition of the 5,000 cartons of yams consigned to the order of Vana at the Port of New York. The Bill of Lading was executed by Flota's authorized Cartegena agents on behalf of Flota;

FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

and for and on behalf of the Master of the S/S Mette Skou. The Instituto Colombiano Agropecuario of the Republic of Colombia's Ministry of Agriculture issued a certificate stating that the yams were found to the best of the inspector's knowledge to be substantially free from injurious diseases and pests, and were believed to conform to the current phytosanitary regulations of the United States.

The proof showed that the shipment together with two other shipments of yams were loaded aboard the S/S Mette Skou, under deck and stowed in the port and starboard No. 3 hatch deep tanks at the direction of the Master.

The cartons of yams were stowed 10-13 tiers high with 2x4's between every third tier. The cartons were set out about eight to nine inches from the wings of the tanks with air channels both fore and aft and athwart ship each about six to ten inches wide. Ventilation was provided by two six inch service pipes which extend at the sides to the main deck. The electrically-operated ventilation system for the deep tanks was run continuously through the entire voyage until the yams were discharged at New York.

FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

When the vessel arrived in New York on July 1, 1974 at 0700 hours request was made by the vessel's officers to the Charterer, Flota, and to I.T.O., the defendant stevedore, to begin discharge of the yams immediately after arrival. New York was experiencing a heat wave at the time. However, Flota and I.T.O. failed to begin discharge of the cargo until July 2, 1974. After discharge the cartons were placed in I.T.O.'s warehouse, which was not adequately ventilated.

The yams were delivered by I.T.O. on behalf of Flota in a damaged and cooked condition. At the time of delivery the yams exhibited excessive heat, moisture, sprouting and tissue breakdown. The plaintiff claimed that it attempted to sell the yams to various wholesale dealers but was unsuccessful because the yams were damaged and decayed. The plaintiff also claimed that it dumped the yams but the evidence was inconclusive concerning the extent of the dumping involved.

Pursuant to the terms of the charter party, the Charterer had the entire responsibility and authority for the load, stow and trim of the cargo under the supervision

of the Captain. The charter party did not warrant or express that the No. 3 deep tanks were suited for the carriage of yams, and as between the owner of the vessel and the Charterer, the decision to load yams in the No. 3 deep tanks was ultimately made by the Charterer. The participation of the officers of the vessel in the loading was as the agents for the Charterer Flota, and not for the owner. Nichimen Co. v. M.V. Farland, 462 F.2d 319 (2d Cir. 1972); International Produce, Inc. v. S.S. Frances Salman, 1975 A.M.C. 1521 at 1544-5 (S.D.N.Y. 1975).

The evidence satisfactorily establishes that the ship was not unseaworthy; that ventilation was not warranted in the charter party but in fact existed and that the ventilation was appropriate in the deep tanks for the shipment of merchantable cargo delivered on board in good condition, properly packed and wrapped. Consequently, the third party claim of Flota against Ove Skou cannot be sustained and is to be dismissed with costs to be assessed against Flota. Ove Skou is entitled to recover legal expenses the amount of which has been agreed upon by the parties to be $ 9,036.24.

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FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

Plaintiff must, in order to make out a prima facie case against Flota, the Charterer, prove by a preponderance of the credible evidence that the yams were delivered to the vessel in good order and condition. North American Steel Products Corp. v. Andros Mentor, 1969 A.M.C. 1482 (S.D.N.Y. 1967). The burden is on the plaintiff to show that the perishables were free of latent pathological disease or injury. J. Howard Smith, Inc. v. S.S. Maranon, 501 F.2d 1275 (2d Cir. 1974), cert. denied, 420 U.S. 975 (1975). That burden was carried by the plaintiff, since the preponderance of the credible evidence, including the testimony of experts and others who inspected the yams in New York, as well as the proof concerning the condition and handling of the yams in Colombia, demonstrated that the damage suffered by the cargo was caused by the conditions to which it was subjected in transit, and not by any inherent defects.

There is a suggestion from the defendants that the yams may nonetheless have suffered from some inherent vice and it is unclear that they did not. However, no finding can be made that there was inherent vice. The most that

can be said is that the yams were in susceptible condition for the results which followed their preparation for shipment, stowage, transportation, delayed discharge, warehousing and delivery. What happened in the packing and handling of the yams after their collection for transportation gives a firmer inference of the basis of the damage occasioned.

The yams had been packed in cartons that may be described as non-breathing and had been wrapped in newsprint, an unsuitable wrapping for such a commodity, which produced a cooking effect. They were then stowed in the deep tanks some 13 tiers high and subjected to a measure of heat which caused the yams to continue the cooking process and decay. Any of these circumstances alone probably would not have resulted in the damage. Their combination, together with the conduct of I.T.O. as hereafter indicated, brought on the destruction of the yams to the major extent that has been established. Thus, the damage was due to a combination at least of the circumstances created or contributed to by the shipper and the charterer and was enhanced by the manner of performance of I.T.O. of its obligations.

FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

In removing the cartons and storing them until delivery, I.T.O. negligently destroyed further quantities of the commodity by its harsh handling in the removal causing the collapse of cartons and damage to contents and by the subsequent unventilated storage of the commodity until delivery to the consignee. I.T.O. thereby contributed to and aggravated the fault assessable against Flota in a measureable amount but here again, one that can only be estimated.

When there is concurrent fault in the fashion described the loss occasioned thereby does not entitle a shipper to whom some of the fault is attributable to claim a recovery for the full value as a premium for its fault. The rule is clear that when two or more parties have contributed by their fault to cause property damage in a maritime cargo situation, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault and that liability for such damage is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.

FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

See United States v. Reliable Transfer Co., 421 U.S. 397, 411 (1975); Selcamerica, Inc. v. S.S. Barberbrook, 390 F. Supp. 462 (S.D.N.Y. 1975).

The Court is called upon to fix the damages under the well-settled rule that where there are wrongdoers and there is uncertainty, the risk of the uncertainty which wrong has created will be resolved from the circumstances in the best way possible by the trier of fact. See Perma Research & Development Co. v. Singer Co., No. 75-7362 (2d Cir., July 1, 1976). Such a resolution has been applied in the admiralty context. See, e.g., Petition of M/V Elaine Jones, 480 F.2d 11, 23-24 (5th Cir. 1973), modified on other grounds, 513 F.2d 911, cert. denied, 423 U.S. 840 (1975).

In connection with that doctrine, the liability of I.T.O. to Flota represents a claim over by Flota to the extent that I.T.O. contributed to the damage. It does not increase the amount of the plaintiff's claim but is an element in determining the comparative fault of Flota and I.T.O.

At the suggestion of the Court, the parties sought

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to determine and fix the respective liability. They have stipulated and agreed among themselves, without prejudice to their rights of appeal from all adverse rulings of the Court as to any party (including the allocations of fault implicit in the amounts referred to hereafter) that the total compensable loss involved to the consignee was $78,358.50. They have also agreed that the degree of fault allocable to each party cannot be determined to a mathematical certainty from the evidence, and in accordance with the rule of damages stated by the Court, the plaintiff and defendant have consented to divide the damages equally subject to the aforementioned appeal by which Flota will claim that it does not owe the award.

results in a recovery by the plaintiff in accordance with the stipulation of the parties of $39,179.25 which shall be inclusive of interest but subject to costs against the defendant Flota. Finally, the defendant Flota and third-party defendant I.T.O. have agreed that the latter's liability should be assessed at $1,000 which shall be inclusive of interest but subject to costs in favor of Flota.

FINDINGS AND OPINION BY MILTON POLLACK, U.S.D.J.

To summarize, judgment of dismissal is to be entered on behalf of Ove Skou as against Flota and it shall recover its expenses and counsel fees which are agreed to amount to the sum of $9,036.24 inclusive of interest and costs.

The plaintiff, Vana Trading, shall recover against Flota the sum of $39,179.25 with costs to be taxed and Flota in turn shall recover against I.T.O. the sum of $1,000 with costs to be taxed.

The parties entitled to such recoveries shall have execution therefor.

The foregoing together with the decision of May 19, 1976 shall constitute the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

SO ORDERED.

July 9, 1976

Milton Pollack
U.S. District Judge

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JUDGMENT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VANA TRADING CO., INC.

Plaintiff

-against-

S.S. "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA S.A.

Defendants and Third Party Plaintiffs,

-against-

OVE SKOU and INTERNATIONAL TERMINAL OPERATING CO., INC.

Third Party Defendants

75 Civil 1278 (MP)

JUDGMENT
76,673

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Milton Pollack, United States District Judge, on May 17,18,19 and 20, 1976, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on July 9, 1976, having handed down its opinion, constituting its findings of fact and conclusions of law, it is,

ORDERED, ADJUDGED and DECREED: That the Third party complaint as to third party defendant OVE SKOU be and it is hereby dismissed, and that OVE SKOU shall recover its expenses and counsel fees

JUDGMENT

against defendant/third party plaintiff FLOTA MERCANTE GRAN-COLOMBIANA, S.A., in the amount of $9,036.24., inclusive of interest and costs, and it is further,

ORDERED, ADJUDGED and DECREED: That plaintiff VANA TRADING CO., INC., have judgment against defendant FLOTA MERCANTE GRAN-COLOMBIANA, S.A., in the amount of $39,179.25., with costs to be taxed, and it is further,

ORDERED, ADJUDGED and DECREED: That defendant/third party plaintiff FLOTA MERCANTE GRANCOLOMBIANA, S.A., have judgment against third party defendant INTERNATIONAL TERMINAL OPERATING CO., Inc., in the amount of $1,000., with costs to be taxed.

Dated: New York, N.Y.
July 13, 1976

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NOTICE OF APPEAL OF DEFENDANT AND THIRD-PARTY PLAINTIFF, FLOTA MERCANTE GRANCOLOMBIANA, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VANA TRADING CO., INC., Plaintiff,- A - against - S.S. "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A., Defendants and Third-Party Plaintiffs, A - against - OVE SKOU and INTERNATIONAL TERMINAL OPERATING CO., INC., Third Party Defendants. A	75 Civ. 1278 (MP) NOTICE OF APPEAL ON BEHALF OF DEFENDANT & THIRD-PARTY PLAINTIFF, FLOTA MERCANTE GRANCOLOMBIANA, S.A.

S I R S:

PLEASE TAKE NOTICE, that the Defendant & Third Party Plaintiff, FLOTA MERCANTE GRANCOLOMBIANA, S.A., hereby appeals to the United States Court of Appeals for the Second Circuit, from the decision, order, findings and conclusions, dated July 9, 1976 and a Judgment herein filed on July 13, 1976 in the United States District Court for the Southern District of New York with respect to the following:

Granting Judgment in favor of the Plaintiff against the Defendant and Third Party Plaintiff, FLOTA MERCANTE GRANCOLOMBIANA, S.A.; denial of indemnity in favor of the Defendant & Third Party Plaintiff, FLOTA MERCANTE GRANCOLOMBIANA, S.A. against the Third Party Defendant, OVE SKOU, and limiting indemnity in favor of the Defendant & Third Party Plaintiff, FLOTA MERCANTE GRANCOLOMBIANA, S.A., against the Third Party Defendant, INTERNATIONAL TERMINAL OPERATING CO., INC. to One Thousand ($1,000.00) Dollars.

DATED: NEW YORK, NEW YORK
August 6, 1976.

NOTICE OF APPEAL OF DEFENDANT AND THIRD-PARTY PLAINTIFF, FLOTA MERCANTE GRANCOLOMBIANA, S.A.

RENATO C. GIALLORENZI
Attorney for Defendant & Third Party Plaintiff, FLOTA MERCANTE GRANCOLOMBIANA, S.A.

67 Broad Street
New York, New York 10004
(212) 425 1773

TO: PURRINGTON & McCONNELL
Attorneys for Plaintiff
40 Wall Street
New York, New York 10005

Haight, Gardner, Poor & Havens
Attorneys for Third Party Defendant,
OVE SKOU
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New York, New York 10004

Hill, Rivkins, Carey, Loesberg
& O'Brien, Esqs.
Attorneys for Third Party Defendant,
INTERNATIONAL TERMINAL OPERATING CO., INC.
96 Fulton Street
New York, New York 10038

CROSS NOTICE OF APPEAL OF THIRD-PARTY DEFENDANT OVE SKOU.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

VANA TRADING CO., INC.,

Plaintiff,

-against-

SS "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendants & Third-Party Plaintiffs,

-against-

OVE SKOU, and INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third-Party Defendants.

----------x

CROSS NOTICE OF APPEAL

75 Civ. 1278 (MP)

Notice is hereby given that OVE SKOU, a third-party defendant in the above-captioned matter, hereby appeals to the United States Court of Appeals for the Second Circuit from the Findings and Opinion filed in this action on July 9, 1976, and the Final Judgment entered on July 13, 1976, with respect

CROSS NOTICE OF APPEAL OF THIRD-PARTY DEFENDANT OVE SKOU

to: awarding Judgment in favor of plaintiff; and limiting judgment against INTERNATIONAL TERMINAL OPERATING CO., INC., to $1,000.00.

Dated: New York, New York
August 19, 1976

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Third-Party
Defendant - OVE SKOU

By _____
A Member of the Firm
One State Street Plaza
New York, New York 10004
Tel.No. 344-6800

TO: CLERK OF THE UNITED STATES
DISTRICT COURT - FOR THE
SOUTHERN DISTRICT OF NEW YORK

RENATO C. GIALLORENZI, ESQ.
Attorney for Defendant & Third
Party Plaintiff - FLOTA MERCANTE
GRANCOLOMBIANA S.A.
67 Broad Street
New York, New York 10004

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Third-Party Defendant
INTERNATIONAL TERMINAL OPERATING CO., INC.
96 Fulton Street
New York, New York 10038

PURRINGTON & McCONNELL
Attorneys for Plaintiff
VANA TRADING CO., INC.,
40 Wall Street
New York, New York 10005

CROSS NOTICE OF APPEAL OF THIRD-PARTY DEFENDANT
INTERNATIONAL TERMINAL OPERATING CO., INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VANA TRADING CO., INC.,

Plaintiff,

- against -

SS "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendants & Third-Party Plaintiffs,

- against -

OVE SKOU, and INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third-Party Defendants.

CROSS NOTICE OF APPEAL

75 Civ. 1278 (MP)

Notice is hereby given that INTERNATIONAL TERMINAL OPERATING CO., INC., a third-party defendant in the above captioned matter, hereby appeals to the United States Court of Appeals for the Second Circuit from the Findings and Opinion filed in this action on July 9, 1976, and the Final Judgment entered on July 13, 1976, with respect to: awarding Judgment in favor of plaintiff; awarding Judgment in favor of third-party defendant, OVE SKOU; and awarding

CROSS NOTICE OF APPEAL OF THIRD-PARTY DEFENDANT
INTERNATIONAL TERMINAL OPERATING CO., INC.

Judgment against INTERNATIONAL TERMINAL OPERATING CO., INC.,

in the amount of $1,000.00.

Dated: New York, New York
August 23, 1976

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
Attorneys for Third-Party Defendant
INTERNATIONAL TERMINAL OPERATING CO., INC.

By s/Martin B. Maloney
A Member of the Firm
96 Fulton Street
New York, New York 10038
Tel. No. 233-6171

TO: CLERK OF THE UNITED STATES
DISTRICT COURT - FOR THE
SOUTHERN DISTRICT OF NEW YORK
Foley Square
New York, New York

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OVE SKOU
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RENATO C. GIALLORENZI, ESQ.
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Third-Party Plaintiff - FLOTA
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New York, New York 10004

PURRINGTON & McCONNELL
Attorneys for Plaintiff
VANA TRADING CO., INC.,
40 Wall Street
New York, New York 10005

PLAINTIFF'S NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed
8/11/76

VANA TRADING CO., INC.,

Plaintiff,

-against-

SS "METTE SKOU", her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A.,

Defendants and Third-Party Plaintiffs,

-against-

OVE SKOU, and INTERNATIONAL TERMINAL OPERATING CO., INC.,

Third-Party Defendant.

75 Civ. 1278 (MP)

NOTICE OF APPEAL

Notice is hereby given that VANA TRADING CO., INC., the Plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Findings and Opinion filed in this action on July 9, 1976 and the Final Judgment entered in this action on the thirteenth (13th) day of July, 1976, with respect to: limiting Judgment in favor of the Plaintiff against the

PLAINTIFF'S NOTICE OF APPEAL

Defendant and Third-party Plaintiff FLOTA MERCANTE GRANCOLOMBIANA, S.A. to $39,179.25.

Dated: New York, New York
August 11, 1976

PURRINGTON & McCONNELL
Attorneys for Plaintiff

BY: John Hay McConnell
A Member of the Firm
40 Wall Street
New York, New York 10005
(212) WH.3-5757

TO: RENATO C. GIALLORENZI, ESQ.
Attorney for Defendant & Third Party Plaintiff,
FLOTA MERCANTE GRANCOLOMBIANA, S.A.
67 Broad Street
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HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Third-Party Defendant,
OVE SKOU
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New York, New York 10004

HILL, RIVKIN, CAREY, LOESBURG & O'BRIEN
Attorneys for Third-Party Defendant,
INTERNATIONAL TERMINAL OPERATING CO., INC.
96 Fulton Street
New York, New York 10038

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THE COURT: Do I have an agreed to pretrial order, or is this proposed findings of fact, et cetera? Are these the ones you discussed the other day subject to certain modification?

MR. McCONNELL: They are, your Honor.

THE COURT: What are the names that have been modified?

MR. McCONNELL: Insofar as I am aware, your Honor, the defendant and third-party plaintiff wishes to withdraw his agreement to paragraph 17 in the plaintiff's proposed findings. I am unaware of any other changes in the rest of the document, your Honor.

THE COURT: Is that right? Is paragraph 17 the only proposed finding and counter proposed finding that is withdrawn?

MR. McCONNELL: As far as I am aware, it is as it relates to the plaintiff's case, your Honor.

THE COURT: Yes. I am asking whether that is the situation.

MR. McCONNELL: That is the situation as far as Ove Skou, your Honor. I understand Grancolombiana has an addicional contention it wants to submit.

THE COURT: I will take a brief statement of matters that are agreed upon, and then briefly the

disagreements by each side.

MR. McCONNELL: Thank you, your Honor. The stipulated facts with respect to the plaintiff's case, your Honor, are that the plaintiff Vana Trading Corporation is and was at all material times a New York corporation. The defendant Flota Mercante Grancolombiana, S.A., is and was at all material times a foreign corporation doing business in New York and was a common carrier of merchandise by water for hire. At all material times herein Flota was the time charterer of the vessel S.S. Mette Skou, which was owned by the third-party defendant Ove Skou. On June 19, 1974, at the port of Cartagena, Colombia, the shipper Exportadora Andina Ltda. delivered to the defendant Flota a shipment of 5000 cartons of Colombian yams for carriage to the port of New York. Each carton contained about 25 kilos net weight of yams.

The defendant Flota delivered to the shipper's forwarding agent a bill of lading numbered 1, dated at Cartagena, Colombia, 19 June 1974, and signed by Flota's authorized Cartagena agent, which recited receipt in apparent good order and condition of 5000 cartons of yams consigned to the order of Vana at the port of New York.

The bill of lading was executed by Flota's authorized Cartagena agents on behalf of Flota and for and

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and behalf of the master of the S.S. Mette Skou. The I.C.E. of the Republic of Columbia's Ministry of Agriculture issued a certificated Certificata Sanitario Number 066 on June 19, 1974, stating that the yams were found to the best of the inspectors' knowledge to be substantially free of injurious disease and pests and were believed to conform to the current sanitary regulations of the United States.

The S.S. Mette Skou thereafter sailed from Cartagena and arrived at the port of New York on or about July 1, 1974. The jams were discharged from the Mette Skou by Flota's stevedore contractor, third-party defendant International Terminal Operating Company, Inc.

The plaintiff Vana on July 2, 1974, was the holder of the bill of lading herein and was the bona fide purchaser of the value of the ship by reason of payment for the yams in the sum of $25,000 against letter of credit number LC-891365, dated September 11, 1975, amended January 18, 1974, issued by Colombia for the bank of Vana to the benefit shipper of Exportadora Andina, Ltda.

Your Honor, the disputed areas with respect to the plaintiff's contentions are, A, that the shipment, together with two other shipments of yams, was loaded aboard the S.S. Mette Skou under deck and stowed in the

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port and Starboard number 3 hatch deep tanks at the direction of the master.

Your Honor, insofar as that statement goes, there is no dispute by the defendant the defendant has disputed that contention because it wishes to add the words "and with the consent of the shipper" to that contention.

THE COURT: In other words, there is no dispute that the shipment was stowed under deck.

MR. McCONNELL: And in the number 3 hatch deep tanks.

THE COURT: At the direction of the master. Who claims it was the direction of the master, the plaintiff or the defendant?

MR. McCONNELL: I claim it and the defendant also claims this, your Honor.

MR. HOOPER: May I speak just to clarify that one point? What Mr. McConnell is now reading is between the plaintiff and the defendant charterer. The defendant shipowner does not agree that the master directed that the yams be stowed in the deep tank.

THE COURT: What does the shipowner say in that regard?

MR. HOOPER: In that regard, your Honor, the

shipowner says that the master arrived with his vessel in Cartagena with the only available space being the deep tanks, that he was not notified that he was going to receive yams until he arrived at Cartagena, and that he had stowed cargo in the previous port which would have blocked stowage of other cargo in the deep tanks. When he got to Cartagena and understood that there were to be yams stowed in the deep tanks, he told the charterer and the ship's representatives that the only space available was the deep tanks; that if he really wanted to stow the yams in a place other than the deep tanks that the **stevedores could shift a cargo of coffee in the deep tanks and allow the yams to be stowed in the tween decks.**

However, this would have involved the expense of shifting and also would have delayed the vessel. The charterers didn't want to do this, so the cargo was stowed in the deep tanks.

THE COURT: In other words, the only space available was the deep tanks and unless cargo abovedeck could be shifted --

MR. McCONNELL: In the 'tween decks, your Honor.

MR. HOOPER: Coffee had been in the 'tween deck protected from the shift. **They'd have to shift about**

a thousand bags of coffee to allow the yams to get into the deep tanks. But if they wished to stow all the coffee in the deep tanks to allow the yams to be stowed in the 'tween, then I think they would have had to shift about 5000 bags of coffee, which I believe would have delayed the vessel about a day and a half.

THE COURT: Mr. McConnell, do you acknowledge that those are the facts as recited by Mr. Hooper?

MR. McCONNELL: Your Honor, I acknowledge the fact that the coffee would have had to have been shifted to the deep tank in order to load the yams in the lower 'tween. What is disputed here in terms of my contention is the claim by the carrier and the owner that the yams were stowed with the permission of the shipper.

Your Honor, the shipper has testified by deposition that he was not aboard the vessel and that he had no representative at the pier.

The defendant's mate has testified that it was the master of the vessel who made the decision as to where the yams were to be stowed, and I do not agree that the shipper decided that the yams should be stowed there in either way.

THE COURT: So that the only question remaining is not whether the shipment was stowed under deck

and in the number 3 tanks "at the direction of the master," since it is acknowledged that the master offered a choice of locations and the location that was selected was the deep tank, and that location was selected or consented to by somebody. Who? The charterer.

MR. McCONNELL: Your Honor, I don't know who, but I assume it was the charterer. It was not the shipper in terms of the testimony that we have before us.

May I also be heard, your Honor --

THE COURT: The issue will then have to be to determine who made the choice. The understanding is that the master tendered the choice and now the question remains of who accepted the choice.

MR. McCONNELL: Your Honor, we have no testimony from the master in this case at all. We have only the testimony of the chief mate that he and the master and then again the master and mostly the master, sometimes he and his master, agreed that that was where it was going to be stowed.

THE COURT: All right, whether it's the chief mate and master or the master-chief mate, but those in charge of running the vessel --

MR. McCONNELL: Decided where to put it.

THE COURT: Offered the choice of the deep tanks

if the coffee was moved -- if the coffee was not moved, or the 'tween decks if the coffee was not moved, and somebody said let's not wait a day and a have to do this, and they then loaded the yams in the deep tanks, isn't that what the situation is?

MR. McCONNELL: That is what the situation is, your Honor.

THE COURT: All right. In that connection, your Honor, the plaintiff's brief addresses itself to the --

THE COURT: I don't want to get into the argument of the case yet. Mr. Giallorenzi, you had some thoughts, was it relative to this matter?

MR. GIALLORENZI: Yes, your Honor. We took the deposition of the chief mate and he stated that the ultimate decision and the choice to stow the yams in the number 3 port and starboard deep tanks were made by the master and himself. He also stated that the shipper was present at the time the cargo was loaded, and approved of the stowage in the number 3 deep tanks.

Testimony further showed, at least at the beginning of it, that the charterer, Grancolombiana, had nothing to do with the stowage of the cargo in the deep tanks. I might also add, your Honor, that when the vessel arrived at the port of Cartagena, it had space in the number 1 and --

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draw my objection.

THE COURT: Therefore number 16 is no longer objected to, is that right, no longer disputed by anybody? All right. It need not be approved if it is acknowledged.

MR. McCONNELL: Your Honor, may we read that into the record then?

THE COURT: Yes, you will read that into the record as a fact that is not disputed. Have you read everything up to 16 into the record that is not disputed?

MR. McCONNELL: Yes, your Honor.

THE COURT: All right. Then you may read number 16, which is not disputed.

MR. McCONNELL: The sound market value of Colombian yams on the date of delivery ranged between $16 and $17 on July 2, 1974 and between $16.50 and $17 on July 3, 1974, and averaged being $16.50 per carton of 50 to 55 pounds, 25 kilos.

THE COURT: 13 has been read into the record, hasn't it?

MR. McCONNELL: 13 has, yes, your Honor.

THE COURT: All right.

MR. McCONNELL: Your Honor, there remains number 18, which is the plaintiff's counter-contention to new matters added by the defendant and goes to the

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question of the stowage and ventilation.

THE COURT: All right. Now, the defendants and third-party plaintiffs' counter-findings all seem to be disputed, except that 16 is now out and the new matter added by the defendant is disputed. As between the defendant, third-party plaintiffs and the third-party defendants, it appears to be undisputed that, according to number 10, admitted by Mr. Giallorenzi, and the fact conceded on the record is as follows: "The vessel M.V. Mette Skou was a cargo ship and was classified plus 100 A1 by Lloyds at the time of the voyage in question and that the shipment of yams in question were harvested very late in the season and were allowed to 'store' in the fields. Any damage to the yams was a result of inherent vice and excessive maturity."

Is that undisputed?

MR. McCONNELL: Your Honor, the plaintiff disputes it strongly, but of course we never have had a chance to discuss -- this stipulation is not between the plaintiff and third-party defendant.

THE COURT: The third-party plaintiffs and the third-party defendant apparently agreed between themselves that any damage to the yams was a result or inherent vice and excessive maturity which had begun prior

to loading aboard the M.V. Mette Skou and either **insufficient or inadequate packaging of the yams. All right. We will proceed with the proof.**

MR. McCONNELL: Your Honor, with respect to the first disputed matter, which is that the shipper had anything to do with the stowage of the yams, the shipper has testified by deposition --

THE COURT: From here on, it seems to me that you ought to put in the proof rather than colloquy.

MR. McCONNELL: I am going to read it, your Honor, if I may.

THE COURT: Whose deposition are you reading?

MR. McCONNELL: I am reading from the deposition of Arturo Mejia Diaz, taken by the plaintiff pursuant to notice, on August 7, 1975, from page 31, lines 7 to 9.

THE COURT: Read his identification first from the record.

MR. McCONNELL: Mr. Mejia is an officer of the shipper Exportadora Andina Ltda.

MR. McCONNELL: "By Mr. McConnell:

"Q Were you present at the pier when the yams were actually loaded above the aboard vessel?

"A No, sir, I was not."

On cross-examination by Mr. Hooper:

* * *

Your Honor, the plaintiff contends that the yams were tendered into the care of the third-party -- of the defendant and third-party plaintiff in good order and condition.

THE COURT: Any other proof?

MR. McCONNELL: Your Honor, we have other proof by inference with respect to the shipment which was sent following --

THE COURT: Go ahead with your case.

MR. McCONNELL: I call Mr. Louis Sousa.

L O U I S S O U S A, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCONNELL:

Q Mr. Sousa, what is your position with respect to the plaintiff?

A I am its president.

Q Do you recollect receiving the shipment of yams aboard the SS Mette Skou in 1974?

A I do.

Q Do you recollect whether or not Vana received any other shipments of yams in 1974?

A Yes, we did.

Q How many shipments in 1974 did you receive, if you can remember?

A All together, approximately fifty, of which about half of that from Colombia.

Q Mr. Sousa, did you receive any shipment following the shipment of the Mette Skou?

A Yes. We received shipments after Mette Skou from Colombia.

Q By **whom were those shipments made?**

A Exportadora Andina.

Q That is the same shipper that shipped the yams on the Mette Skou?

A Yes.

Q What condition were those yams in on the subsequent delivery?

MR. HOOPER: I object, your Honor.

MR. GIALLORENZI: I object, your Honor.

MR. HOOPER: It is irrelevant.

MR. GIALLORENZI: I join in the objection.

THE COURT: Sustained. You haven't laid a foundation of any knowledge on this witness' part. You are just asking for conclusions in self-interest. What does he know about them and how about them?

Q Did you examine the shipments which were made subsequent to the Mette Skou?

A Yes, I examined them coming off the shipment.

Q What condition did you see?

MR. GIALLORENZI: Your Honor, I'd like him to fix a date.

Q Can you tell us when you saw the shipment arrive?

A On or about July 17, 1974, we had about four or five thousand cartons discharged from a vessel which loaded in Cartagena, Colombian, and upon discharge I examined the yams coming off the ship.

Q What shipping line was it?

A Prudential Lines.

Q Do you remember the name of the vessel?

A Santa Cruz.

Q What condition did you see?

A Coming off the ship, I examined. These yams were very good.

Q Mr. Sousa, what is the season for yams from Colombia?

A We usually start importing around November or early December and usually complete towards the end of July.

Q Did you have any shipments immediately prior to the Mette Skou from Colombia?

* * *

examination.

MR. McCONNELL: On this heading, your Honor.

THE COURT: Any cross-examination?

MR. HOOPER: Your Honor, am I to understand that we are going to proceed with this witness section by section and then cross-examine, or --

THE COURT: Not necessarily. He can finish up all of his testimony at one time and take all of the cross at one time.

MR. HOOPER: There will be cross-examination when he is finished, I believe.

THE COURT: All right. Proceed with the next topic.

MR. McCONNELL: Your Honor, I'd like to ask some questions of Mr. Sousa respecting the length of time he has been in this business. Although it doesn't bear directly on the point, it is the background in order to qualify him with respect to the examination of these yams.

Q Mr. Sousa, how long have you been in the importing business?

A Almost thirty years.

Q What items do you import?

A Fruits and vegetables, but yams, I have been importing yams for about fifteen, sixteen years.

Q What other items?

A Fresh and frozen fruits and vegetables such as plantains, bananas, casaba, yautia, pumpkins.

Q Where do these items come from?

A Central, South America and the Caribbean.

Q How are they imported?

A By surface freight as well as air freight.

Q Respecting yams now, how long have you been importing yams?

A About fifteen, sixteen years.

Q Where have you imported them from?

A From numerous countries, including Japan, Barbados, Trinidad, Grenada, St. Vincent, Colombia, Venezuela.

Q How long have you been importing them from Colombia?

A About six years, five and a half, six years.

Q Would you tell us the names of the shippers you have used from Colombia?

A Exportadora Andina mainly, and initially a nominal quantity from another individual which I do not recollect his name.

Q How are the shipments packed?

A In the last five years, five and a half years,

all in cardboard cartons, well-ventilated for the nature of the cargo, such as has 4-inch holes on each side of the carton which permits handling as well as ventilation; and it has about 1-inch slot on top as well as on the bottom of each carton.

Q When you say "slot," you mean --

A A space open on the bottom and top of each carton and the length of the carton, approximately 12 to 16 inches, the length of the carton.

Q In other words, it is your testimony that these cartons are the ones that are used for all ships in the last five years.

A To me, yes. It has been a standard package for us for the last five and a half, six years.

Q Are you aware of any other method of shipping yams from Colombia?

A Yes, we had two small shipments in crates.

Q When were they made?

A At the fairly early stages, late '70 or early '71, and that turned out disastrous.

Q Did you discontinue the using of the crates?

A Yes, we did.

Q What was the reason for discontinuing their use?

A Because the crates would collapse and damage

the contents.

Q How would the yams be damaged by the crate?

A If the crate collapses and the contents are spilled or the upper crates rest on top of the contents, the contents would be damaged.

Q Are you familiar with other importers of yams from Colombia?

A Yes.

Q Are you familiar with the packaging that they employ?

A Yes.

Q Would you describe it?

A Some of the other importers have similar packages as we do. In addition, they may have one or two holes on the side of the carton. We do not use those type of cartons because those holes on the side of the cartons tend to weaken the carton and collapse the carton, damaging the contents.

Q Have you used them with the holes?

A Yes, we had some trial shipments.

Q Has there been any distinction to the contents, condition of the contents upon their reception, between the yam cartons with holes in the side and without?

A No, except the cartons would collapse if it has

holes on the side.

Q Mr. Sousa, were you in New York at the time the Mette Skou arrived in New York?

A I was. Yes, I was.

Q Did you go down to the pier?

A The Mette Skou arrived on the first of July, I believe. I did not go down to the pier, I don't believe, on the first day. I went to the pier on the second day and the third day.

Q Were you present when the yams were being discharged from the vessel?

A Yes.

Q Would you describe their condition at the time of discharge?

A When the vessel first started to discharge our cargo I was not on the pier. I arrived shortly thereafter. Initially the yams came off low temperatures, what I consider normal temperatures, in the high 80's, low 80's -- in the high 70's to low 80's degrees temperature. But within a few pallets , five or six pallets the temperature started to rise rapidly. Then I discovered the yams were coming off with temperatures in excess of a hundred degrees.

Q What does a temperature in excess of a hundred

degrees do to yams?

A It would cook. Not only yams, any other vegetable.

Q How is this condition manifested with respect to the yam?

A Well, in the beginning you may not notice any damage. The yam will be still solid, but because of any excessive heat will tend to break down the cell structure or the texture of the yam. It may not be immediately visible, but within a very short period of time, a couple of days or so, then the texture will turn brownish, and naturally that will cause the yam to break down.

Q How long may yams be stored, Mr. Sousa?

A Properly stowed, it could be held for eight, nine, ten months or longer. We discontinued the shipments from Colombia in July only just to make room for other sources of supply, mainly Jamaica, which starts shipping sometime in July. So we discontinue Colombia in July, not because of its -- the yams could not be held longer, but just because we have to make space in the market for other countries.

Q Did the yams exhibit excessive heat upon their discharge from the vessel?

A Yes.

Q Did you take temperatures of the yams?

A Yes, myself and the inspector for the Department of Agriculture.

Q Were you there when the inspector from the Departmtne of Agriculture took his temperatures?

A Yes. I could not get my own surveyors and I telephoned the U.S. Department of Agriculture to urgently ask them for an inspector. He arrived around 3 o'clock in the evening of July 2 and he pulped temperatures for some of the yams on the pier as well as those coming off the ship.

Q Do you remember what temperatures of pulped?

A Yes, he pulped temperatures of 80 degrees and also a hundred degrees plus. Mostly a hundred degrees plus.

Q Did you pulp yams at the same time or in that same period?

A Yes, I was sticking my own thermometer in the same yams as the inspector for the USDA.

Q What temperatures did you get?

A My thermometer went up to 120 degrees. The inspector's thermometer went up to a hundred degrees.

THE COURT: What are these, Fahrenheit temperatures?

THE WITNESS: Yes, sir.

Q What are these temperatures that you are referring

to?

A This is a thermometer you stick into the pulp of a vegetable or fruit, which records the temperature inside that fruit or vegetable.

Q Do you have such a thermometer with you that you can show us?

A Yes.

MR. McCONNELL: Show the Court.

Q This is spiked into the fruit?

A Yes. You take the thermometer, you stick it through the vegetable or produce and it will record the temperature inside the vegetable or fruit.

Q Was there any other manifestation of damage with respect to the yams at the time you inspected them following their discharge?

A Besides being overheated, there was an unusual small of decay. I could not find any decay while coming off the ship, nor did the inspector of the USDA, but the odor was definitely there. We just could not trace it. I was trying to, at the time he was very busy trying to separate the few cartons that came off the ship with the 80 degrees temperature, and I was too busy to locate which yams were already decayed.

Q Have you ever been aboard any vessels which

* * *

that analyzes the breakdown of the **molecules** in yams? What is it that gives him the capacity to tell us what causes it? I know that meat gets rotten, but I don't know why it gets rotten.

MR. McCONNELL: Well, your Honor, the practical experience that he's had with them. Let me attempt to so qualify him, your Honor.

Q Mr. Sousa, have you had occasion to stor yams during the past fifteen years or so since you have been importing them?

A Yes, I have.

Q What different conditions have you stored them under?

A I have been experimenting with yams for fifteen years or more.

THE COURT: What do you experiment for? Salability or --

THE WITNESS: Quality, condition, your Honor, what causes yams to break down.

THE COURT: What does cause a yam to break down?

THE WITNESS: Lack of ventilation or excessive heat, or both.

THE COURT: In other words, put yams into an unventilated, hot space just to find out if something would

* * *

Q Have you ever received any trailers with the vent closed?

A Yes.

Q What was the condition of the yams when they were discharged?

A Very similar to the ones we received on the Mette Skou.

THE COURT: Looking at the yams that came off this particular shipment that we are interested in, could you tell whether it was heat or ventilation or bugs or inherent vice of one or another kind that brought this on?

THE WITNESS: Yes, sir, your Honor.

THE COURT: How could you tell whether it was one or the other and not inherent vice?

THE WITNESS: Your Honor, some yams came off the ship at 80 degrees temperature. In the same lot they were 120 degrees and more. Those, obviously, those that came off with the high temperature broke down immediately. The only thing that could cause that, your Honor, would be lack of ventilation.

Q Did you have a surveyor present at any time during the discharge?

A As I say, I couldn't get my own surveyor, so I got a USDA inspector.

Q Did you have a surveyor at some point?

A Yes. We had a joint inspection at a number of places the following week, although I had kept the carrier informed of the problem that I was experiencing. Also I had called the carrier a number of occasions on the day the vessel discharged and asked him for a surveyor.

Q Did you give written notice by telegram of the damage to these yams?

A Yes.

Q To the carrier?

A Yes. When I realized the extent of the damage, I sent the carrier a telegram advising them of the high temperatures the yams came off the ship at and holding them responsible for any damage.

Q Do you recollect when this telegram was sent?

A I believe it was sent the day after the vessel discharged. I believe on the 3rd of July '74.

Q Would you tell us what the market is for yams that are damaged in the manner in which these yams were damaged?

A Sixteen and a half to seventeen dollars --

Q No, I think you misunderstood my question. Is there any market for yams which are damaged as these were?

A No, definitely not.

Q How can you tell whether the yam is damaged in

this respect?

A When yams are affected by excessive heat, it is difficult to determine how badly damaged or the extent of the damage to the yams unless you actually cut the yam. When cutting the yam then you will find the texture, the interior of the yam has discolored, which it will eventually in a short period of time affect the surface of the yam. But even before affecting the surface of the yam, if the yam or any other vegetable is overheated, such as a hundred degrees, it will take some time before the yam is affected on the surface, before it becomes visible. So it becomes most difficult to repack because the surface may be solid while the interior may already start the decaying process.

Q What did you do with the yams following their discharge?

A I made every effort to try and take delivery of all the yams the same day, to send it to fumigation, a procedure --

Q Hold it there a moment, Mr. Sousa. You said you sent the yams to fumigation. Would you tell us whether or not yams are required to be fumigated?

A Yes. It is one of the conditions which yams are brought in. The USDA requires that yams be fumigated

before marketing.

Q Where were these yams fumigated?

A Two different locations. One area, one warehouse called Port Warehouses, which is located in Manhattan, and the other warehouse is a government warehouse, which is located in Port New York, Shed 109.

Q When the yams were discharged from the vessel, where were they placed?

A On the pier.

Q Was there some kind of a building there?

A Yes, there is a closed pier. In this case it was the army base, which is a very long pier. It is palletized after coming off the ship. In this case it was palletized when coming off the ship and then moved into various locations on the pier. In the first instance, some of these yams went into a place called a crib, which is a closed-in area inside the pier. Some of it was stowed outside the crib.

Q How long did it take you to accept delivery of the yams from the army pier?

A I was ready to take delivery on the 2nd and the 3rd of July.

Q How long before you actually removed the yams from the pier?

* * *

Q To whom?

A At high cost we endeavored to salvage as much as possible and we did repack about 250-some-odd packages, and delivered and sold them to a company in the Bronx called West Indies Food.

Q Are you associated with West Indies?

A Yes, I am.

Q Are you its manager?

A No.

Q Are you familiar with what occurred with respect to the 251 cartons delivered to West Indies?

A Yes.

Q Would you relate that?

A Yams in particular, when affected by excessive heat, as I said before, it's difficult to say its interior condition. So while it may look good when repacking, the interior may already be damaged. So in salvaging these 250-odd cartons and delivering to West Indies they in turn sold it or delivered to other customers. But the following day most of these yams were returned back to West Indies for repacking because what was repacked by us the day before already showed signs of decay at its ultimate customer. So it necessitated repacking again. These same 250-odd cartons I know from experience that they were repacked

three, four and five times. This will happen to any cargo when it's overheated excessively.

Q How many cartons were ultimately sold?

A I don't know how many they sold. I know that eventually out of the 250-some-odd cartons --

Q How much did they pay you for it?

A I only collected $3000, although I submitted an invoice for 251 of which they repacked themselves for the second time, they returned 60-some-odd cartons to us.

Q Did they return any cartons to you?

A Yes, they returned 65 cartons I believe back to us.

Q With respect to the remainders of these cartons of yams, would you give us the disposition of them?

A I repacked, delivered to West Indies 251 cartons. They in turn sold those 251 cartons. When the customer received some of those cartons the following day they returned it back to West Indies for repacking.

THE COURT: How much did you invoice the 251 cartons to West Indies for?

THE WITNESS: I don't recall the total amount, your Honor, but I invoiced them at $17.

THE COURT: $17 a package?

THE WITNESS: Yes, sir.

Q How much did you receive for those cartons that you sold?

A After four months we finally settled accounts for $3000.

Q What is your relationship with West Indies?

A I am its president. I have nothing to do with day-to-day management.

THE COURT: Who are the stockholders?

THE WITNESS: Myself, your Honor, and someone else.

THE COURT: So you were selling it to yourself?

THE WITNESS: Not exactly, your Honor.

THE COURT: You sold these 251 cartons to your affiliated company for $67 and they paid you $3000, paid the company $3000. What did they get on the resale?

THE WITNESS: Your Honor, they lost money on the transaction.

THE COURT: They may have lost money, but they had an amount of money that they took in. What did they take in?

THE WITNESS: It was under $3000, your Honor.

THE COURT: Why did you pay yourself less than what you recovered on the resale? After all, it is just an incorporated pocketbook here, wasn't it?

* * *

THE WITNESS: They were destroyed, your Honor.

THE COURT: By whom?

THE WITNESS: They were destroyed by incinerators by Utica Rubbish Removal, after being surveyed by a joint surveyor, your Honor.

Q Was there any other company associated with the dumping?

A Yes. In the seventeen or 1800-odd cartons that I had initially taken to the Bronx to sell were destroyed or dumped into the Bronx by a company called Acme Trucking Company, to incinerators.

THE COURT: How much did you pay the shipper?

THE WITNESS: $25,000, your Honor, under a letter of credit.

THE COURT: Did they check it all or did you get a rebate?

THE WITNESS: No, sir, they got paid in full.

THE COURT: So you paid $5 a carton, is that what it was?

THE WITNESS: That was the agreement for the whole season, your Honor.

THE COURT: $5 a carton?

THE WITNESS: Yes, sir.

THE COURT: And here you are seeking $16 and $17

a carton, is that right?

THE WITNESS: Yes, sir.

Q Mr. Sousa, what other expenses besides buying the yams go into the sound market value of yams?

THE COURT: What were your expenses besides the $5?

THE WITNESS: Your Honor, there is approximately $2 ocean freight, $1.50 customs duty initially, and then customs may or may not appraise at a later date another dollar or so.

THE COURT: They didn't appraise here, did they?

THE WITNESS: Yes, sir, they did.

THE COURT: You mean they appraised rotten yams? What did they appraise the rotten yams for?

THE WITNESS: Your Honor, the customs have a right to appraise, they appraise based on the FOB value -- I'm sorry, sir -- they appraise on the contention that when they were loaded they were in good condition. So all their appraisals are based on the FOB values, not the conditions.

THE COURT: You didn't pay the appraisers any money on the yams, did you?

THE WITNESS: I entered the yams at $5 --

THE COURT: A dollar and a half customs duty on

* * *

what we do with the yams.

THE COURT: I'm trying to find out what happened here, not **theoretically.** The customs court is across the street and we have some exposure to the customs court too. Did you get a bill for anything above the dollar and a half?

THE WITNESS: I cannot remember right now, your Honor.

THE COURT: What expenses besides ocean freight and the initial customer duty did you have on the reconditioning, we will say, of these cartons, fumigation, et cetera?

THE WITNESS: Trucking to fumigation, fumigation, trucking from fumigation, loading charges on the pier, overtime in many areas.

THE COURT: How much were you out of pocket for all of these things per case?

THE WITNESS: Your Honor, I estimate in excess of $30,000, your Honor.

THE COURT: You estimate that it cost you $55,000 for this **fiasco?**

THE WITNESS: I believe that if I consider all my experiences, your Honor, it would be in excess of $55,000, yes, sir.

THE COURT: Fifty-five thousand and one dollar is in excess of $55,000. What was the excess you are talking about? It is some nominal excess or is $55,000 a nice round sum of estimate?

THE WITNESS: I believe it would be, your Honor, $55,000 is what I would be out of pocket.

THE COURT: All right.

BY MR. McCONNELL:

Q Did you have a specific repacking expense which you paid?

A Yes.

Q To whom was it paid?

A One individual called Comacho, who undertook to repack.

Q How much was that?

A I believe I paid him $1400.

Q I'd like to show you this item and ask you to identify it.

A Yes. Raquel Camacho, $1400.

Q What is it?

A A check in the amount of $1400 unloading four trailers of yams, selecting and repacking same from July 10, '74, to July 13, '74.

Q Did you have any trucking expense over and above

the normal trucking expenses of trucking to fumigation, trucking from fumigation?

A Numerous, but I could only account for one.

Q What was that?

A One Rafael Pinaro.

Q I'd like to show you another item and ask you if you can identify that.

A Yes. This is the check for $600 which I paid him to go around collecting yams for various customers and taking it down to **Stone Avenue in Brooklyn for storage.**

MR. HOOPER: Your Honor, could we have some of these papers marked for identification?

THE COURT: Yes, they all should be offered for identification so we can see just what they are.

MR. McCONNELL: I'd like to have the first one for $1400.

THE COURT: State what it is.

MR. McCONNELL: A check to Camacho for $1400. The second item, a check to Pinaro for $600.

(Plaintiff's Exhibits 1 and 2 marked for identification.)

Q I show you two further items and ask you to identify them.

A One is Acme Carting Company and was for removing

of yams from premises, 1860 boxes of yams **Andino.**.

Q How much?

A $477.85.

MR. McCONNELL: I'd like to have that marked as Plaintiff's Exhibit 3 for identification.

(Plaintiff's Exhibit 3 marked for identification.)

A Another bill from Utica Rubbish Corporation, which is an itemized list of the amount of trucks that went to the incinerator.

Q How many boxes of yams were shown disposed of on that statement?

A 2980 cartons.

Q How much did you pay on that invoice?

A The bill is enclosed to $1620. I only paid $1500.

Q I show you two checks.

A This is the check made out to Utica Rubbish, two checks, each for $750. One dated on the 16th of August, the other on the 30th of August, covering that bill for $1620, which I only paid $1500.

MR. McCONNELL: I'd like this entire exhibit marked Plaintiff's Exhibit 4 for identification.

(Plaintiff's Exhibit 4 marked for identification.)

* * *

(Plaintiff's Exhibit 6 marked for identification.)

MR. McCONNELL: Your Honor, I ask that this be accepted under the Government Documents Act.

MR. GIALLORENZI: No objection.

MR. HOOPER: No objection.

MR. MULROY: No objection.

(Plaintiff's Exhibit 6 received in evidence.)

MR. McCONNELL: That is all, your Honor.

BY THE COURT:

Q Let me ask you, Mr. Sousa, what does this mean on this inspection certificate. First of all, I suppose this is the inspection certificate at Colombia, is that right? This was an inspection in Colombia?

A No, sir. This was made by the USDA.

Q In New York?

A Yes, sir. When the vessel arrived.

Q It says "Colombia" up on top. Maybe that means it comes from Colombia. I see, the inspection point was the military terminal pier 3.

A Yes, sir.

Q It says that the condition of these cartons was firm, 2 to 26 percent, and then there is a comma, I don't know what that means. And then it says average

9 percent dry-type Fusarian rot. How do you understand this?

A The dry rot, your Honor, is normal --

Q What does that word here, the condition is firm, mean?

A First period. 2 to 26 percent.

Q 2 to 26 percent of the shipment was firm?

A No, sir, the whole shipment was firm.

Q The whole shipment was firm?

A Yes, sir.

Q All right. 2 to 26 percent with an average of 9 percent was dry-type?

A Yes, sir.

Q Fusarian rot is an inherent vice, isn't it?

A Yes, sir, that is a dry rot, your Honor. That is normal.

Q Then they said this was no soft rot. If the heat had attacked these yams, there would have been soft rot, isn't there?

A They didn't inspect all of them.

Q I am talking about what the certificate reads.

A Yes, sir.

Q This is the certificate that was furnished to

you which you accepted?

A Yes, sir.

Q And they say the material inspected had no soft rot in it?

A At that time, yes, sir.

Q But that there was Fusiarian rot in the shipment?

A Yes, sir.

Q Which means that that was a vice of some agricultural sort that had nothing at all to do with heat?

A That's correct, sir.

Q At what point was this inspection made? Did you request it to be made?

A Yes, sir. That was made at the time it was coming off the ship.

Q The complaint here is that the material as it was coming off was in bad order and condition and the certificate of the Agricultural Department says that at least 9 percent on the average of the shipment had an element of rot in it for which the ship is not responsible, isn't that so?

A Yes, sir. But my client, your Honor, and I did not testify on that condition coming off the ship. I testified they were overheated and cooked coming off the

ship. The USDA pulped these yams coming off the ship at a hundred degrees plus.

Q They say the range was 80 to a hundred degrees.

A Yes, sir, plus.

MR. McCONNELL: Your Honor, the testimony has been that the thermometer only goes up to a hundred.

THE COURT: All right. Cross-examination.

Looks like a very ambiguous situation.

MR. McCONNELL: Your Honor, could I clear up the situation?

THE COURT: Later on. Unless you want some more testimony on direct.

MR. McCONNELL: I just wanted to make clear the question of when the manifestation of the damage was first apparent. Heating damage --

THE COURT: When was it first apparent?

THE WITNESS: By Friday, your Honor, by the 5th it was becoming apparent. On the 2nd, small lots, your Honor, were already apparent coming off the ship. But in small quantities. It takes three to four days, your Honor, for the heat to affect it.

THE COURT: But what a quarter of the shipment had this Fusiarian rot.

THE WITNESS: That is normal, your Honor. That

is only on the surface of the yam.

THE COURT: I agree that is not everything. But I am saying a quarter of the shipment had Fusiarian rot according to this certificate. It says 2 to 26 percent and an average of 9 percent had dry-type Fusiarian rot.

THE WITNESS: 9 percent or even a higher percentage of dry rot does not affect the salability of tropical yams because that is expected. A dry rot is expected. Any products coming from the tropics, particularly root vegetables which are grown in the tropics under extensive moisture conditions and then when it dries the skin becomes dry rot. But the texture is firm and a hundred percent. That happens, your Honor, on every ship. From the very beginning of being harvested.

THE COURT: You mean that the public gets sold dry rot?

THE WITNESS: Your Honor, dry rot is only the surface.

THE COURT: I know, but lots of people that I know eat th. surface as well as the inside.

THE WITNESS: No, sir, your Honor. These yams are peeled, your Honor.

THE COURT: From now on I wouldn't eat the skin

of a yam. I will tell you that.

MR. McCONNELL: Mr. Sousa, what is the difference between a Colombian yam and a **North Carolina southern sweet** potato yam?

THE WITNESS: Oh, definitely different, your Honor. It is the same family, but completely different.

THE COURT: All right. Shall we hear the cross-examination?

CROSS-EXAMINATION

BY MR. GIALLORENZI:

Q Mr. Sousa, when does the growing season end in Colombia for yams?

A When you say "growing season" --

Q When did you harvest them?

A Yams could be harvested right up to May.

Q It has to be harvested right after May. When is the latest date that they can harvest Colombian yams? When did they become fully matured?

MR. McCONNELL: There are two questions there.

Q When is a Colombian yam considered fully matured, ready to be picked?

A Usually between February and March, depending on the area it was grown.

Q Assuming you bought a yam grown in the Palmira

section of Colombia, when would a yam grown in that section of the country be considered mature?

A February, March. In some cases January.

Q Do you know Mr. Armando Mejia Diaz?

A Did you say "Armando"?

Q I'm sorry, Arturo.

A Yes, I know him very well.

Q Was he the shipper of these particular yams that form the subject of this suit?

A Yes.

Q Would you agree with him when he stated that the yams from his particular farm were fully matured in December?

A It could mature in January, February.

Q He didn't say that in examination before trial. Would you agree with him that the yams from this particular farm would be considered fully matured and ready for harvesting in December?

A You are speaking with particular farm, sir.

Q I am talking about the farm from whence these yams came from, Mr. Mejia's farm.

A I will not dispute it matured on his farm in December. I will not dispute it.

Q And that it stayed in the warehouse until these

yams were shipped, which was in June, the middle of June of '74?

A I don't know if it was his testimony. If a yam matures in December, it doesn't mean it is harvested in December.

Q Is it allowed to remain in the ground?

A It could remain in the ground. When I said "matu e" I was associating "mature" with harvesting. The yam could mature, you could leave it in the ground for three or four months, you will not harm the yam.

Q In other words, it is your testimony that by leaving a yam in the ground for three or four months it will not cause any harm to it?

A No, sir. Not until say May or June, and then the yam begins to grow, to send out shoots and to grow itself.

Q When a yam is in the ground after it has fully matured, isn't it subjected to attacks from rodents or insects?

A No, sir.

Q It is not?

A No, sir.

Q Would it be subjected to any disease that might occur due to the fact that it remained in the ground?

A No, sir.

Q In other words, it is your testimony that by remaining in the ground after it has matured and it is ready for harvesting, until such time as it is harvested several months later, that no harm can come to the yam?

A If there are floods, it will destroy the yam, yes, by wiping out the entire cultivation.

Q I am talking about damage as a result of insects or rodents or damage as a result of fungus growth. Is there any such possibility that that would exist?

A That is always a possibility, sir, but to the best of my knowledge I have no experience with yams remaining in the ground even though they might have been fully harvested for two or three months and they become harmful or unsuitable for shipping.

THE COURT: You don't contend that leaving them in the ground after they are mature is that form of preserving them, do you?

THE WITNESS: For a brief period of time, yes, sir.

THE COURT: I am talking about two or three months after a vegetable has ripened and is ready to be taken out, are you saying to me that it is like refrigerating the vegetable by leaving it in the ground, preserving it?

THE WITNESS: You will preserve it, yes, sir. The vine will dry completely. These yams are completely different than our domestic yams.

THE COURT: You say that Columbian yams are **conserved** by leaving them in the ground rather than removing them when they are mature?

THE WITNESS: To a point, yes, your Honor, because the vine dries and there is no more substance to go into the yam.

Q Are you familiar with the storage of yams?

A Yes.

Q Have you read any articles involving the storage of yams? Any publications?

A I don't believe there are any articles written regarding storage of tropical yams.

Q Did you ever hear of an article entitled "Yam Storage," which was written by D. G. Coursey of the Department of Biochemistry, Nutrition and Food Science, University of Ghana? Did you ever read that article?

A I have heard of him, yes.

Q And he is an acknowledged authority?

A You are speaking of a oompletely different yam now, sir.

Q The African yam is a different yam from the

Colombian yam?

A Yes.

Q And different from the American yam?

A Yes. I brought in two shipments from Ghana and they are completely different from Central South American yams or our domestic yams.

Q In other words, you say there is no possibility for a Colombian yam which remains in the ground after it has matured to become damaged either by an insect, a rodent or some fungus, is that your testimony?

A I said there is always a possibility of something happening but to the best of my knowledge I don't know of any harm that could be done to a yam after being matured to remain in the ground.

Q Did you know the month when these yams which form the subject of this litigation were taken or harvested from the ground?

A No, sir.

Q Would it surprise you if I told you that Mr. Mejia stated that they are allowed to remain in the earth until March of 1974?

A That wouldn't surprise me.

Q And that he stated that they were fully matured around November or December?

A It wouldn't surprise me, sir, if he said he harvested yams that were matured in December and he harvested them in March.

Q And there would of course be that possibility that I spoke about, that they might become damaged?

A As you know, sir --

Q Just yes or no.

A I do not know of any disease that might affect the yam after the yams are harvested --

THE COURT: Mr. Giallorenzi is trying to get you to focus on this question. He says the man who ran the farm and sold you the yams says that they matured in December and he harvested them in March. So he left them in the ground for a period of approximately three months. Do you say from your experience and knowledge in the field that leaving those yams in the ground for such a period after they matured would not in any way affect their quality or absence of vice?

THE WITNESS: To the best of my knowledge and experience, your Honor, I don't know of any harm that could come to a yam leaving it in the ground three months after maturing.

THE COURT: Is this professor who writes articles or whatever he is taking a contrary view, as far as you know?

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VANA TRADING CO., INC.,

- against - 75 Civ. 1278

THE SS METTE SKOU, etc.

New York, New York
May 18, 1976 - 11:00 a.m.

(Trial resumed)

THE COURT: Are you through with the witness on the stand?

MR. McCONNELL: No, Judge.

L O U I S S O U S A, resumed.

CROSS-EXAMINATION (Continued)

BY MR. GIALLORENZI:

Q Mr. Sousa, is it the practice of some of the growers in Colombia to allow the yams to remain in the earth until the end of the season to get a better price?

A Some they do, yes.

Q Some people do that?

A Yes.

Q By allowing the yams to remain in the ground for a longer period of time after they have matured, does that subject them to any danger of infection or damage?

A Not that I know of. It may be possible.

Q Are you familiar with an article entitled

* * *

A By harvesting and allow them to cure in an open space.

Q Well, if you harvest, then you take them out of the ground, isn't that right?

A Yes, sir.

Q Would they be less subjected to an attack of a yam beetle, a termite or a rodent when they are out of the ground than in the ground?

A They would be subject to attack in the ground as well as outside the ground.

Q So that by leaving them in the ground they are subject to an attack?

A As I said, sir, it is possible, but I have not experienced it.

Q How do you go about harvesting these yams? How do you get them out of the ground?

A You said these yams. Which yams are you referring to?

Q I am referring to the Colombian yams.

A Well, there are literally thousands of farmers planting yams in Colombia, some small, some large, some medium.

The larger farmers will mechanize their harvesting. The smaller farmers will dig the yams out of the ground with

a fork.

Q Well, now, the testimony that was offered by Mejia, the shipper, was to the effect that some of the yams came from his farm and some came from other farms.

Do you know whether those farms used mechanized equipment to harvest them, or do you know whether they used, let us say, a shovel or any other instrument that a farmer would use?

A I have no way of knowing, sir, where the yams in question were harvested, from where they came from.

Q When you harvest the yams, do you encounter any mechanical bruises or cuts?

A Yes.

Q Is a cut yam more susceptible to disease than one that is not cut?

A A lot of it depends what time of the year these yams were harvested. You might be interested to know that the dry season in Colombia works from or starts in January through May, and when yams are harvested during this period without any heavy moisture, such as rain, the yams are harvested even though they may be mechanically cut. If they are properly stored, that cut, that injury will dry up. Of course, such yams will not be suitable for export. But they are good for the local market because the

cut will dry and seal itself.

Q But when a yam is cut, isn't it susceptible, before drying and sealing itself, to an invasion of a fungus or some type of bacteria?

MR. McCONNELL: Your Honor, I must object. There is no evidence that any of these yams were cut.

THE COURT: I beg your pardon?

MR. McCONNELL: There is no evidence that any of the yams were cut.

THE COURT: That's got nothing to do with the cross-examination.

A As I said, sir, when a yam is damaged from being harvested mechanically or even with a fork or shovel, if that yam is properly ventilated or even exposed on the surface of the ground for a couple of days, that injury will seal itself by drying, by becoming dry, and you will not break down the yam, no, sir.

Q You say there is no possibility of a bruised or cut yam to become infected?

A Sir, anything is possible. What I am saying, in general, from my own experience and knowledge. If a yam is damaged mechanically while being harvested, naturally that yam is not exported, but for the local market those yams are exposed to the surface, exposed,

rather, to being dried, and that injury will seal itself by becoming dry and therefore that injury could last for seven, eight, nine, ten months.

Q Well, if a yam is cut and then it seals itself, there is always a possibility of the bacteria having entered into the yam and remaining there, isn't that possible?

A I repeat, sir, that anything is possible. To the best of my experience, that injury becomes dry and that dryness becomes part of the yam.

Q Are you familiar with an article written by Franklin W. Martin **entitled** "Effects of Type of Wounds, Species and Humidity on Curing of Yams, Tubers, before Storage," written for the Journal of Agriculture of the University of Puerto Rico, Volume 58, Number 2, pages 211 to 217, April of '74?

A I am not familiar with that writing, but I should like to point out at this time there are --

Q Just answer, are you familiar with it?

A No, sir.

Q I read from page 211 of that article.

"Scratches, scrapes" --

MR. McCONNELL: Your Honor, there is no foundation to read from all of these things. There is no showing as to what kind of yams there are.

THE COURT: This happens to be cross-examination and on cross-examination the witness may be tested on matters that may not be directly relevant, but they may bear on his credibility, so that this is entirely proper cross-examination.

Your point is something different and not applicable to this cross-examination.

MR. McCONNELL: Your Honor, I think the witness is entitled to at least know what kind of yams are being talked about.

THE COURT: You may go ahead with your question.

Q I quote:

"Scratches, scrapes and bruises inevitably occur when roots and tubers are harvested. These wounds permit infectious organisms to enter, leading to loss of quality, reduced storage life or total loss through rotting."

Do you agree with that statement?

A Sir, there are about possibly over one hundred types of tubers grown throughout the Caribbean and tropical countries. Unless you were to tell me which tuber you are referring to, then I could be more specific in my answer to you, sir.

Q Well, now, you know that there is a yam belt

that passes throughout a certain portion of the world, isn't that correct? Are you familiar with the term "yam belt"?

A Sir, I am familiar with at least fifty different varieties of yams.

Q Well, now, if a yam grown in Puerto Rico suffers a mechanical bruise and a yam grown in Colombia suffers a mechanical bruise, do you mean to tell the Court that fungus does not attack them in the same manner?

A They are subject to be attacked in the same manner, but there are different types of yams, some more susceptible to bruising than others.

Q Well, a mechanical bruise caused by a pick or a shovel is a pretty tough bruise, right?

A Yes, sir.

Q So that, are there any yams that you know of that can withstand a bruise from a pick or a shovel?

A Most varieties, particularly all varieties shipped to this country, yes, sir, they could be subject to mechanical bruises or any other type of bruise and still be able to be marketed in the domestic market.

Q Despite the fact that they are bruised and cut and subjected to bacteria?

A It becomes subject to bacteria if it is not

properly ventilated and exposed where such cut becomes dry.

If those yams were to be packed immediately for export, in all probability they would be subject to bacteria, yes, sir. But if such yams are not packed for export, they would have no market value here for experienced people realize that it is not practical to ship damaged yams because they will break down in transit. But such a mechanical cut could withstand any type of bacteria if it is properly ventilated.

Q Is that the only thing you would do to a yam that has a mechanical cut, just ventilate it?

A Sir, there are primitive methods employed by numerous farmers, one of which they used for plastering -- I can't think -- not clay -- a white powder -- sorry, sir, I cannot think of the name now -- but it is used for plastering, plastering walls.

Some people, some small farmers will use that to, or spread that on the cut so as to help dry it faster, but the same cut, if it is exposed, if it is well ventilated and exposed to dry weather conditions, it will dry itself up.

Q Provided it does not suffer any fungus or bacteria damage? Is that right?

* * *

damaged by mechanical bruising?

A Well, if it is harvested, there is no further maturity of the yam.

Q I am talking about when it is coming out of the ground and it is damaged.

Does the size have anything to do with the probability of damage? In other words, is a larger yam more susceptible to mechanical damage than a smaller yam?

A Again, sir, it depends who is harvesting such yams. Experienced people know where that vine from which the yams are grown, if they are large yams or smaller yams, without harvesting, actually harvesting the yams. The ground will crack a little bit. We are speaking of harvesting in the dry season -- and therefore, if one is careful, he will not harvest immediately alongside the vine.

You would try to stick the fork, if he is harvesting by hand, he will try to stick his fork, let's say, 18 inches to two feet away from the center of the vine, so as to prevent any damage.

Q But damage will occur, you will admit that.

A Oh, yes, sir.

Q The shipper, Mejia, testified that he packed these yams in cartons and then wrapped each yam individually with a white piece of paper like a newspaper

but without print on it; is that correct?

A As I recollect, sir, that is not the way he testified.

Q Well, how were the yams packed?

A He says that these yams are brought into his warehouse and they are each individually selected.

Q Right.

A To make sure there are no cuts, and then it is passed onto a table and reselected again by another supervisor to make sure they are the proper grade for export, and then wrapped and then packed into cartons.

Q How are they wrapped?

A In newsprint before printing.

Q Well, that is what I said. Newsprint paper without the printing.

A Yes, sir.

Q Incidentally, how many yams were packed to fill your order of 5000 cartons?

A It could vary from 150,000 to 400,000.

Q Do you know whether --

A I don't know exactly how many yams.

Q Do you know whether each and every one of those was inspected before it was put into the carton?

A I would have to say yes, based --

Q Do vou know that of your own knowledge?

A **Sir?**

Q Do you know that of your own knowledge?

A From what I've seen on the pier --

Q No. Just answer yes or no. Do you know that of your own knowledge? Please answer the question.

A I think the question requires more than a yes or no, sir.

THE COURT: Well, he asks you if you saw them wrapped.

A No, sir, I did not see them wrapped.

Q Now, do yams breathe?

A Yes, sir.

Q And by putting this newsprint-type paper around them, does that assist in the breathing of the yam or does that cut down on the breathing?

MR. McCONNELL: I object to the form of the question, your Honor.

THE COURT: There is nothing wrong with the form. I don't know whether it is descriptive of anything.

MR. GIALLORENZI: I'll withdraw it.

THE COURT: You want to know whether a yam is suffocated when it is wrapped?

MR. GIALLORENZI: That's right, your Honor.

THE COURT: Why don't you say that?

MR. GIALLORENZI: I am sorry.

A In the first place, papers are not tightly wrapped around the yam. They are loosely wrapped around the yam and while the wrapping might to a point minimize the breathing of oxygen to that yam, it would also minimize, it would be offset by minimizing any damage that one yam would have against damaging another yam.

Q So that we can start off with the premise that by putting a newsprint paper around each individual yam, it does minimize the breathing -- starting off with that premise, is that correct?

A To a point, yes, sir.

Q Now, you say that by putting the newsprint-type paper around it, you avoid bruising or chafing with other yams, is that correct, packed in the same carton?

A Yes, sir.

Q Could you separate those yams without a newsprint paper cover by putting excelsior in the cartons or by putting spaces in there which would separate them?

A Sir, I have experimented with that on a number of occasions from a number of countries and the result is, we had to revert back to wrapping, which is traditional. They always have been wrapped and the only safe out-turn

for yams is, will be when yams are properly wrapped the way we wrap ours as they were wrapped on this particular shipment.

Q So that by wrapping them with this type of paper you minimize chafing but you do cut down on the breathing, is that correct?

A Very little, sir.

Q Very little?

A Yes, sir.

Q Do you know the composition of this paper?

A No, sir.

Q There are all types of paper?

A Yes, sir, I even had them wrapped in newspaper to economize, for the supplier to economize on this I've even had him buying old newspapers and using old newspapers for wrapping them.

Q This type of paper is newsprint but without the printing?

A Not necessarily, sir. It could be, we have used other types of newsprint.

Q Well, what was the type of paper used on this shipment?

A I believe, sir, it was newsprint. It was in any case the same type of paper that were used on 50,000

other cartons that came in from Colombia to us.

Q During storage, and it was testified to by Mr. Mejia that at least part of the shipment was stored in his warehouse from March to June, are the yams subjected to attacks from rodents or termites or any other type of insect?

A Well, my experience --

Q Just answer yes or no first.

A My experience has been that rats don't attack yams. They don't like yams.

Q What about beetles?

A I have not seen it, but it is possible.

Q Have you seen termites attack yams while they are in storage?

A I've seen bugs on yams, yes, sir.

Q And do those bugs have a tendency to destroy the yam?

A Possible, but I have never experienced it or seen it.

Q I refer you to an article I discussed yesterday, "A Review of Yam Storage Practices and Information on Storage," by D.G. Coursey, published in 1967, Volume 2, in the Journal of Produce, RES, by the Pergament Press, Limited, printed in Great Britain, at 238, where the author says: "Yams in store are occasionally attacked by various

species of termites, especially when they are stacked on the ground."

Do you agree with that statement?

A Possibly, sir. What you say by "attacked," you mean attacked and damaged?

Q That's right.

A I've never experienced it, sir.

Q Well, Mr. Mejia testified that these yams were stored in piles in his warehouse for at least three months before they were packed.

Is it possible that they may have been attacked at that time by termites?

A It is possible, sir.

Q And would that facilitate an invasion of a rotting procedure once they are attacked?

A No, sir, because before packing they are properly graded and inspected, before being wrapped to be packed into cartons.

Q Well, is it possible that a yam may be rotting in the inside without being detected from a visual observation of the outside of the yam?

A Only when it is affected as it was affected on your vessel. They overheated. The inside would be, the cell structure would be broken down, yes, sir, by

excessive heat.

Q And could the cell structure be broken down by a fungus and you wouldn't know that from the outside?

A If Mr. Mejia had his yams stored from March and he waited until, let's say, late June to pack the same yams, if the texture or the cell block of the yam was damaged, it would have shown up way before the packing took place.

Q I thought you testified yesterday that you could only detect the damage to the interior of a yam when you cut it open.

A That is quite true, sir, but when the cell of the yam breaks down, then the decay is almost rapid, it is almost immediate, so if the cell block is damaged from disease or any other reason, such as excessive heat, then the -- within a matter of days that yam would break down on the surface, yes, sir.

Q What about if a yam is attacked by let's say bacteria in the interior, could that also cause it to break down in a short period of time?

A Anything is possible, yes, sir.

Q Could it also be possible that you couldn't detect that from the outside until you cut the yam?

A Not if the yam is harvested in March.

Q I am not interested in that. I am talking about a specific question.

If it is rotting from the inside due to the bacteria, could that be detected from the outside?

A It all depends how long the bacteria has taken effect.

Q But it would be possible that you would have a rotting on the inside without its showing on the outside and you would only ascertain it after you cut it; is that correct?

A For a period of a few days, yes, sir.

Q Now, again referring to Coursey's article on storage of yams, at page 238, he states as follows:

"Storage rots are the most important factors responsible for the deterioration of stored yams. In some cases once a tuber has become infected, the rotting can spread right through in a week or two, rendering the whole tuber quite unfit for food."

Do you agree with that statement?

A I am not familiar with that particular statement, but I believe that statement was written based on African yams, not yams grown in the western hemisphere exported to this country.

Q Well, isit possible for, once a yam has become

infected, to have a spreading of the rotting throughout the yam in a week or two?

A Yes, sir.

Q And we are talking about Colombian yams now. You say "Yes, sir."

A Sorry, sir. You were referring to your readings --

Q I am referring to Colombian yams.

If you have a rotting inside the yam, can it spread within one or two weeks to the entire yam, rendering it unfit for food?

A I don't believe Mr. Coursey has any experience in Colombian yams.

Q You don't think so?

A No, sir.

Q You recognize him as an authority on yams?

A African yams, yes, sir.

Q He is an authority on yams, isn't it a fact?

A African.

Q Isn't it a fact that he is the outstanding authority on yams in the world?

A African yams, sir.

Q No other yams?

A To the best of my knowledge, no, sir.

Q Do you agree with this statement, the same page: "One of the commonest type of tuber rot converts the healthy tissue rapidly into a powdery, round, evil-smelling material, which is completely inedible."

Do you agree with that statement?

A Yes, sir. Any tuber that breaks down and becomes decayed is not suitable for human consumption, yes, sir.

Q This form of rot can often spread through a large part of the interior of the tuber without any defect being visible externally. Do you agree with that?

A For African yams, yes, sir.

Q What did you mean yesterday when you said you had to cut a yam before you could determine whether it was unfit for human consumption?

A I was referring strictly to the out-turn of the Mette Skou, where the yams were overheated, they were still firm on the outside, or most of them were very firm on the outside, but the cell structure of the yam was already damaged from the excessive heat.

THE COURT: Did the shipper request refrigerated service here?

THE WITNESS: No, sir, your Honor. Yams are not carried in refrigerated stowage, sir.

THE COURT: What is the big point about the yams

getting overheated, if the refrigerated service is not considered appropriate or necessary?

THE WITNESS: Sir, yams could stand high temperatures provided they are well ventilated. When I say "high temperatures," your Honor, I don't mean in the hundred, 120 degrees, but they could stand temperatures very easily in the nineties. They are grown in such climactic conditions, but when yams become overheated, which is a direct result of improper storage and improper storage not only heats the yams, it suffocates the oxygen going into those yams, because yams do breathe, sir, like any other vegetable, so it is not so much that the yams were overheated, but it was the fact that the cause of overheating the yams also caused the suffocation of the yams.

THE COURT: What was wrong with the stowage in this case?

THE WITNESS: I did not see the stowage, your Honor, but my surveyor advised me that when he went on board he saw yams stowed in a deep tank which --

THE COURT: What is wrong with that?

THE WITNESS: Your Honor, deep tanks are OK for dry cargo such as coffee or better yet for liquid --

THE COURT: Did the shipper specify the location where the stowage should take place?

* * *

the condition that they were found in. The agriculture certificates that I have been looking at here don't say that the high temperature was the cause of any breakdown. It just says, makes a note of a fact, but the consequence is not recorded and I am just wondering here whether we are not engaging in a series of speculations based on hypotheses which are themselves speculations.

I don't know that we gain anything by listening to what somebody from Puerto Rico wrote, or listening to something that theorizes about yams in general. It doesn't tell me anything about this particular shipment.

THE WITNESS: Your Honor, it is the policy of the United States Department of Agriculture not to express their opinion --

THE COURT: Then all you are telling me is it is their policy not to state the facts. All right. Now, that means that we haven't got the facts, we don't know what the facts are. Whatever the reason is for their reluctance or their diffidence, it does not tell me what happened to these yams and why.

MR. McCONNELL: Your Honor, may I -- Mr. Sousa has testified that the temperatures were in the area of 120 and in excess and that --

THE COURT: Mr. Sousa didn't jam a thermometer

into these yams, did you?

THE WITNESS: Yes, sir. I went inside with the inspector of the Department of Agriculture, yes, sir.

THE COURT: You found the yams at 120 degrees?

THE WITNESS: Your Honor --

THE COURT: The inspector didn't say that.

THE WITNESS: Your Honor, the inspector says 100 degrees plus.

THE COURT: But that could mean 100.1. If I have a temperature at 100 plus, that sometimes is 100.1. That doesn't mean 120. Where he says 80 to 100, he could just as well have said 80 to 120 if an additional 20 degrees were involved.

THE WITNESS: He could not, sir.

THE COURT: I am not impressed with the idea that these yams were at 120 degrees when the maximum figure put down here with a plus sign is 100.

Go ahead with your examination, Mr. Giallorenzi.

Q Mr. Sousa, you said that you took the temperature of these yams upon the arrival of the Mette Skou.

A Yes, I did.

Q On what day did you take those temperatures?

A On the 2nd of July.

Q Did you make a record of them?

A I made notes, yes, sir.

Q Do you have the notes with you?

A I compiled those notes and I made into a form of a memorandum --

Q Do you have the memorandum with you today?

A My attorney would have it, yes, sir.

MR. GIALLORENZI: Mr. McConnell, do you have that memorandum?

MR. McCONNELL: Yes, I do.

MR. GIALLORENZI: May I see it, please?

(Mr. McConnell hands document to Mr. Giallorenzi.)

Q The original notes which indicated the recordation of the temperatures, do you have them with you?

A No, sir, because after --

Q What happened to those notes?

A Well, once I compiled all my notes into a memorandum, then I no longer have the need for them. I might keep them for six months, one year, but eventually I dispose of them.

Q You knew there was this litigation pending, didn't you?

A Yes.

Q And you disposed of those notes, the original recordation of the temperatures which you said you took?

You destroyed them?

What did you do with them?

A After I compiled them into a memorandum, all the information regarding that vessel, I no longer had need for them.

THE COURT: He wants to know what you did with them whether you needed them or not.

THE WITNESS: Your Honor, sometimes I keep them for a while and they might still be available.

THE COURT: What did you do with them?

THE WITNESS: I do not recall right now, sir, but I don't have them on me.

THE COURT: That is the answer to it; you don't know.

Q You don't know?

A No, sir.

Q Do you recall being examined before trial on January 23, 1976, at page 46, and being asked this question by Mr. DeOrchis:

"Q Do you know how long a yam would take to decompose to a point where it is of a nonmarketable condition in a temperature of, let's say 90 to 95 degrees?

"A Well, yams is a tropical fruit and tropical weather conditions or prevailing temperatures are normally

in the nineties. In Colombia, that would be around 90-95 degree temperatures and yams would last in such tropical temperatures for nine, ten, eleven months."

Do you remember giving that answer?

A Yes, sir.

THE COURT: How long was this voyage of this ship?

MR. GIALLORENZI: It left --

THE WITNESS: Eleven days.

MR. GIALLORENZI: It left Cartagena on June 20 and arrived in New York on July 1, 1974.

Q Mr. Sousa, when were you advised that the vessel would arrive in New York? The date when it would arrive in New York.

A The week before the vessel arrived.

Q And who advised you of that fact?

A Someone in Grancolombiana.

Q Do you know the name of the man?

A It could have been one of two individuals.

Q And did you make arrangements to pick the cargo up?

A Yes, sir.

Q That is, take it from the pier.

A Yes, sir.

Q Were you told that the vessel would arrive on July 1, 1974?

A Yes, sir.

Q And would dock at the army base in Brooklyn?

A No, sir.

Q When did you find out that the vessel would dock at the army base?

A On July 1.

Q On July 1.

Now, when were you --

A Possibly the Friday before.

Q Possibly the Friday before.

What arrangements did you make to remove the cargo from the pier?

A Well, I made the necessary clearance for the vessel, arranged for trucks to be available on July 1, and if the vessel had discharged on July 1 I would have been able to take delivery.

Q Now you had to clear this cargo with the Customs, is that right?

A That is correct, sir.

Q Does that mean that you had to pay the duty that you were referring to yesterday?

A My broker would have done that, yes, sir.

* * *

Q Did you pay them?

A Yes, I did.

Q Do you have the check with you?

A Yes, sir.

Q May I see it, please?

(Mr. McConnell hands documents to Mr. Giallorenzi.

MR. GIALLORENZI: May I mark this for identification, please.

(Defendant Flota's Exhibit A marked for identification.)

Q Now, this Defendant's Exhibit A for identification, which is an invoice to you from Bar-Zel, together with a check, states, "Duty deposit, subject to liquidation, $6,875."

Is that correct?

A That is correct.

Q What does that mean, "subject to liquidation"?

A Well, when the entry is made a certain amount of duty is paid. Perishables usually enter into the country under what is called an ID permit, which is immediate delivery permit. Therefore, it is not liquidated. The duties are not liquidated until sometime afterwards.

What that implies is that they have paid the initial duty of $6,800-some-odd and upon liquidation, the

Customs may take upon themselves to appraise the value thereby increasing the amount of duty already paid.

Q When did you ascertain that these yams which were loaded from the Mette Skou had no commercial value?

A I knew on the pier that the majority, the vast majority would have no market value.

Q Did you ever obtain a refund on this difference, "Deposit subject to liquidation"?

A I did not.

Q Did you apply for a refund?

A It is not possible.

Q Isn't it possible to inquire of the Customs Division to supervise the destruction of yams and then ask for a refund of the duty?

A Immediately after --

Q Just yes or no.

A Yes, sir.

Q Why didn't you do it in this case?

A Because that law applied immediately after the shipment.

Q What law are you talking about?

A Up to that time.

Q Up to July 1, 1974?

A After that, up to the middle of July of 1974 it

was U.S. Customs policy that once delivery is taken, duty is paid.

After that shipment or sometime about a month after the shipment through negotiations with the United States Customs, then they agreed that duties would be paid after fumigation because that cargo is not the property of the consignee until it is actually fumigated, because fumigation is done under USDA or the Department of Agriculture supervision.

Q Isn't it a fact that Customs never charged duty when merchandise was destroyed under its supervision?

A Not true.

Q That is not true?

A No.

Q Can you tell me the name of the law that you are referring to, or the regulation number?

A Sir, I am not a Customshouse lawyer nor a Customshouse broker.

Q But you say the law was changed or a regulation was promulgated in the middle of July.

A I do have in my office a Customs regulation when that law was changed, which they called "the new pipeline," covering certain types of perishable goods coming into the country and yams, yams and certain other

products, because inspections are mandatory by the Department of Agriculture. Therefore, it could come into the country. Before delivery is made duty must be paid or guaranteed and once duty is paid, there is no recourse for a duty refund unless it is to be destroyed under the Customs supervision within a certain period of time, which is not practical in this shipment.

Q Do you know whether Bar-Zel actually paid the government the duties which was assessed upon this shipment?

A I have no evidence that they paid, but I could say that if they did not pay such duties they would not be in business now, and they are still in business today.

Q But you don't know whether they paid the government?

MR. McCONNELL: Your Honor, I object to the question.

THE COURT: What is the objection? Mr. Sousa says --

MR. McCONNELL: It has no relevance.

THE COURT: It has no relevance? I think it is relevant, highly relevant. The question of whether or not these expenses of $30,000 that Mr. Sousa estimated are inflated by $6000.

MR. McCONNELL: Your Honor, he paid Bar-Zel,

who is a reputable company.

THE COURT: It was duty deposited subject to liquidation. I don't understand your impatience at all. They are entitled to find out whether there were payments that stuck or that should have been recovered.

Go ahead.

Q Do you know whether Bar-Zel paid the government? Yes or no.

A No.

Q Mr. Sousa, how many cartons of yams do you usually sell per day?

A I never estimated, sir.

Q You never estimated?

A Not on a daily basis.

Q Now, let's say June 27, 1974, do you know how many cartons of yams were in your warehouse, Vana warehouse and West Indies Warehouse?

A Vana warehouse or West Indies?

Q And West Indies.

A On the 27th of June I would say about 1200.

Q 1200 cartons.

Incidentally, you testified yesterday that you were a shareholder of West Indies.

What percentage of the shares of West Indies

* * *

for the month of June, $96,096.96.

Did the Felipe arrive during the month of June in Philadelphia?

A Yes.

Q And it arrived in New York in July, isn't that correct?

A No.

Q It did not.

When did you take delivery of the shipment in New York from the Felipe?

A I said, sir, I took delivery in Philadelphia.

Q The entire shipment?

A 5,000, yes, sir.

Q Did you take any in New York?

A There were 5,000 that I took delivery in Philadelphia from which I loaned West Indies 1,000 which were returned back to me in July.

Q Now, how could you identify from this bill that we are looking at that these yams came from the Felipe?

A I did testify that we do not sell ship-by-ship or week-to-week. We have a standing arrangement with American Banana where we give supply of yams throughout the entire year and we close our accounts at the end of each month.

Q Can you tell me in looking at this invoice, which was rendered to American Banana Company, number 3391, the number of cartons of yams that were sold for the month of June?

A No. We work on the dollar basis, whatever they collect from customers they pay us, less a commission.

Q So that you couldn't tell from this invoice whether you sold 10,000 cartons or 5,000 cartons or 2,000 cartons?

A No, I could not.

Q Mr. Sousa, when did you go down for the first time on the Mette Skou?

A I started to leave on July 1 and then I thought of calling first since they said the ship had no berth, so since they had told me the week before that they were not sure where the ship was going, so to call them early Monday morning. So I telephoned and they said the ship was down at the army base but was not working, but they would definitely be working the next day.

So the following day, July 2, I was down at the army base on the Mette Skou, on the pier, that is.

Q Is the army base, for the purpose of loading yams into trucks, considered an appointment pier?

A Well, I do not know the procedure at the army

base, but I've always made it a practice to make, to call the pier and make arrangements for appointments, yes, sir.

Q Did you make an appointment for the purpose of sending your trucks down on July 1, 1974, to pick up yams?

A Yes, I did.

Q Who did you call?

A Someone at the pier. The delivery office.

Q Was he employed by Grancolombiana or by International Terminal Operating Co., Inc., a stevedore, if you know?

A He did not identify himself, who he was. I am sorry. He did not identify by whom he was employed. He did identify himself as the appointment man or the appointment clerk.

Q The appointment clerk?

A Yes, sir.

Q Is the appointment clerk usually engaged by the stevedore contractor rather than by the stevedoring company?

A Usually by the stevedoring company.

Q On July 2, did you make any appointments for the purpose of sending trucks down?

A Well, we had trucks down on July 2nd.

Q Did you make an appointment first?

A Yes.

Q With whom?

A I made it personally in the office, the delivery office at the army base.

Q With whom?

A The same fellow who said he was the one that spoke with me the day before.

Q Do you know by whom he was employed?

A I presume the ITO.

Q Did you send any trucks down on July 2?

A Yes.

Q How many trucks did you send down?

A I had two trucks on the pier and then I had four standing by, trailers, not trucks; trailers.

Q And were you able to load any of your trucks or trailers?

A No, sir.

Q Why not?

A On July 2, one trailer went in, inside the pier, another trailer stayed outside the pier and we waited until after lunch and they said they could not possibly load us that day.

So we first disengaged the trailer that was outside the pier and went home and the trailer that was

inside the pier also left. I don't recall what time.

Q Who told you that they could not load the trailers on July 2?

A This was not done at the delivery office. This was done by someone in charge on the actual pier where the vessel was ied to. The delivery office was the next pier.

Q Do you know by whom that gentleman was employed?

A I do not, no, sir, but I presume yourselves or the stevedoring company.

Q Did the man that you talked to identify himself as an employee of Grancolombiana?

A He represented himself as the dock boss.

Q And do you know who employs the dock boss?

A Usually the stevedoring company.

Q On the following day, July 3, did you send any trucks down?

A Yes. We had the same six trucks -- sorry, six trailers.

Q And how many did they load?

A Three, and some of them only half loaded. Or partially loaded.

Q What was the reason why they were not able to load, given to you, why they did not load all of your trucks?

A They didn't have -- they were short of labor; they didn't have complete teams.

Q What does a team consist of?

A A hi-lo driver, a checker and a loader.

Q By whom are they employed?

A The stevedoring company, I presume.

Q Do you receive a bill from the stevedoring company for the services of the loader?

A Yes, we did.

Q Do you receive a bill from the stevedoring company for the services of the hi-lo driver and the checker?

A We don't receive a bill for individual workers. We receive a bill for loading trucks.

Q Now, the checker's function is to count the cartons as they go into the truck, is that right?

A Yes.

Q And the hi-lo driver, he brings the hi-lo up with the cartons of yams on it?

A Yes.

Q And the loader assists the truck driver in loading the truck?

A Yes.

Q And you say that three out of six trucks were

loaded on that day?

A No, sir. I said only three trucks were loaded, some of which were only partially loaded.

Q Did you complain to anyone about the lack of loaders or hi-lo men or checkers?

A I protested from the time the vessel, the cargo come off the ship, that that cargo should be dispatched off the pier to salvage as much as we could.

Q Who did you give your protests to, make the protests to?

A To the dock boss, who told me there was nothing he could do, he just had no labor working.

Q That was on July 3?

A That was on July 2.

Q And you loaded on July 3, is that right?

A That is right.

Q Three trucks?

A Yes, sir.

Q Now, July 4 was a holiday?

A Yes, sir.

Q And July 5 was a Friday?

A Yes, sir.

Q Did you send any trucks or trailers down to be loaded on that day?

* * *

A By then it would be questionable.

Q By then it would be questionable?

A Yes, sir.

Q Why?

A Because the damage, there was nothing much that I could do to salvage the cargo that was already damaged coming off the ship. The only way I could possibly salvage that cargo was by expeditious delivery so I could take advantage of fumigating, let's say on Tuesday or even possible Wednesday morning, and try to --

Q Wednesday the following week?

A No, sir. July 2.

Q July 2?

A Or July 3.

Q You say that if there had been a quick delivery of the cartons on July 2 you would have been able to fumigate them and salvage them?

A I would have been able to salvage much more, yes, sir.

Q When you say "much more," how much more?

A Well, sir, it is hard to make such a prediction. I do know from what I saw on the pier that I could salvage a substantial quantity of the cargo, yes, sir.

Q If there could have been a delivery on the 3rd?

A On the 2nd.

Q The 2nd?

A Or the 1st.

Q Now, by July 8 you felt that you could not salvage anything?

A July 8 and 9 I felt I could salvage a nominal amount, but there wasn't much. By July 8 I already had about 1,800 in the market and I must have visited eight, ten or twelve different customers with that merchandise and no one would take it, so I knew that the salvage at that time, on that date, that such salvage would be somewhat limited and this was verified by the, your own surveyor who inspected --

Q Just a moment, please. Never mind about my own surveyor. Just tell me what you know. On July 8 you say what, you could have salvaged some?

A No, sir.

Q None?

A On July 8, I said I knew I could salvage a nominal amount but I could definitely not salvage any part of the seventeen or eighteen hundred that I had already delivered to the Bronx.

Q How about July 9? Did you send any trucks down? That was a Tuesday.

* * *

July 2 and July 3.

Q But you don't remember the appointments that you made on the other days?

A No, sir.

Q And those appointments were made with ITO?

A I presume the employee would be employed by ITO.

Q And you say if the labor was available on those two days, July 2 and 3, you could have completely loaded the 5,000 cartons?

A Yes, sir. It would be no different than in Philadelphia. We took delivery of 5,000 in about five or six hours.

Q That is your testimony, that in two days you could have taken the whole 5,000?

A Yes, sir.

Q How many cartons to each trailer?

A All those are 40-foot trailers and some were 45 or 42, I am not sure, but they all have a capacity of over 900 cartons.

Q Now, you were able to salvage 251 cartons, isn't that correct?

A No, sir. I repacked 250.

Q You repacked 251?

A Yes, sir.

* * *

transit of yams?

A Which kind of decay are you referring to, sir?

Q I am talking about, let's say, a decay caused by rotting, by bacteria.

A Well, a dry rot is a bacteria. It is --

Q But do you have a normal percentage of decay in an ocean transit, like from Colombia to New York, of yams?

A A long transit.

Q From Colombia to New York, is there a normal decay?

A It all depends what you mean by "decay," sir.

Q Just answer yes or no and then your lawyer can go into it.

A There is a normal amount of decay, dry rot, yes.

Q Do you know what the percentage is?

A It could vary up to anything between 6 up to 12 percent with dry rot.

MR. GIALLORENZI: I have no further questions at this time.

THE COURT: Mr. Hooper.

In answering the last question, are you saying to me that of the 5,000 cartons it could be expected that 12 percent of the contents would wind up in some form of dry rot by the end of the voyage, no matter what you did about it?

THE WITNESS: Yes, sir. The dry rot does not affect the product, your Honor.

THE COURT: Now, the inspection certificate says that the tubers have sprouts from a quarter to 1 1/2 inches in length.

Does that indicate when those sprouts attached themselves to these tubers?

THE WITNESS: Sprouts are usually developed, your Honor, by excessive moisture, which is caused by excessive heat, or overmaturity of the yam.

THE COURT: Is it reasonable to assume that these yams had their sprouts when they were loaded?

THE WITNESS: No, sir. Yams --

THE COURT: You mean that in ten days they sprouted?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. HOOPER:

Q Mr. Sousa, in the questioning by Mr. Giallorenzi, you mentioned the figure of 50,000 other cartons of yams which came in.

What period of time did that cover?

A The 50,000 cartons of yams probably covers a

period of January through June.

Q And that is your season of importing yams, January through June?

A No, sir. We import yams throughout the year.

Q Do you import Colombian yams throughout the year?

A No. We usually cut off Colombia shipments at the end of July.

Q So your season for Colombia yams are January to July?

A That is correct.

Q About how many shipments did you receive in that period of time from January to July of 1974?

A From January through July?

Q Right.

A About fifteen, fourteen, fifteen shipments or thereabouts.

Q How many of those shipments did you make claims on?

A A couple. For shortages or damage?

Q Damages.

A A couple.

Q How many do you consider a couple?

A One or two. One was nominal.

* * *

high as $20 down to 12, $13.

THE COURT: The range is 12 to 20?

THE WITNESS: Sometimes even lower, your Honor.

THE COURT: How low? 10, 8?

THE WITNESS: We had one month, your Honor, the month was very bad. I think it went down to, if I am not mistaken, your Honor, 10.50 or 11.50. I am not too sure on this.

Q Do you keep any records or do you know what the average price was which you received per carton for each shipment in 1974?

A Not since '73. We did not -- we started the first two months of '74. Then I lost some of my staff and I switched my arrangements whereby I would have one wholesaler doing all the deliveries and making the collections and paid at the end of each month.

Q And you used that procedure for the first two months of 1974?

A No, sir. I used the procedure of itemizing the first two months as to what we sold them for, but as I said, I lost staff after that period and then I could not replace the staff, so I made an arrangement with a wholesaler who would -- with whom I would join to sell the merchandise to numerous customers, and he would undertake to make some

of the deliveries and also to make the collections. He would pay me at the end of each month or within a reasonable period thereafter.

Q Forgetting that arrangement for a while, you mentioned before that you had an arrangement with the American Banana Company where American Banana Company, I believe, stored your yams for you, is that correct?

A No. American Banana does not store yams for me. They receive and they deliver yams upon receipt.

Q But you sold them on consignment to American Banana?

A Not on consignment. We sort of set a price which is based on the market price at that time.

We may go a quarter higher or a quarter under the market price, which is dictated by the USDA marketmen, and we try to work within a reasonable amount from those prices dictated -- not dictated, but sustained by the USDA.

Q But I am interested in where these yams physically go once they arrive in New York.

You testified that Vana does not own any warehouse; is that correct?

A That is correct.

Q So that you have to put the yams somewhere?

A Yes.

* * *

import?

A When you speak of the market, I am talking about my own market.

Q I was talking about the entire market.

A I'm sorry.

Q Let me ask it this way then: What percentage of the entire market is taken up with your companies?

A Sir, that would depend on competition. I cannot --

Q What is your share of the market here?

A It would depend on the competition. I cannot control competition.

Q I am looking for a rough estimate. Do you bring in 90 percent of the yams in New York City, 10 percent, 50 percent?

A There would be some shipments that I would have a hundred percent. There may be shipments I would only have 25 percent. So it is highly fluctuating, depending on whether -- I would only ship heavy quantities if I knew that the market was there and the competition did not have that many quantities.

Q How many cartons of yams did you have on hand when the Mette Skou arrived in New York?

A On Monday, July 1, I must have had approximately

3,500, on July 1, which I intended to dispose on the same day or the day after.

Q Did you dispose of them?

A No. After I saw the condition of the Mette Skou on July 2, I decided to hold back whatever supplies I had.

Q For a better price?

A Well, the price was stable.

Q In other words, if the Mette Skou's shipment didn't come in, the price would go up?

A No. No, that is not the case, because we had some of the Filipe lot or the lot before the Mette Skou with a firm price, as I said, and we started off at 17 1/2 on the previous week, and we were hoping to settle at 16 1/2, $17 of the Mette Skou, so that Monday, Tuesday and Wednesday we would have been able to dispose of that lot and then sell the Mette Skou for the following week because we had no other vessels out of Colombia until the 17th of July.

Q Do you have any records which would indicate the money you make, your net profit, from Colombian yams, in, say, May of 1974?

A No. We don't work on a month-to-month basis regarding profits. We assess the profits at the end of the

fiscal year.

THE COURT: Did you have any spoilage in May or June?

THE WITNESS: No. Spoilage in May and June? yes, sir.

THE COURT: To what extent?

THE WITNESS: We had a vessel that came in around the 12th of June, your Honor. We had exactly the same problems as the Mette Skou, sir, except a little bit worse. That vessel was in the high seas almost three weeks, so when the cargo arrived, instead of -- the high temperatures were there but the decay already had taken effect.

THE COURT: How many cartons were involved in that?

THE WITNESS: If I am not mistaken, 1,900, your Honor. There were 5,000 packages, of which 1,900, I don't know the exact amount, I think 1,900 were damaged.

THE COURT: Did that involve a lawsuit, too?

THE WITNESS: Yes, sir.

Q What kind of damage did that other shipment sustain?

A As I said, exactly the same as yours, excessive heat, lack of ventilation.

Q How did the excessive heat and lack of ventila-

tion manifest itself on that shipment?

A On the particular vessel -- you are referring to which vessel, sir?

Q The one you just told the Judge about.

A In that particular vessel, the yams were stored in two different places. There were 2,000-odd packages in one chamber, one hatch. Well ventilated. Those arrived in excellent condition.

There was another lot, approximately a similar amount, and we took recorded temperatures of about 100-odd degrees, I think it was 110, but that vessel had taken about three weeks transit time so the excessive heat already manifested itself into the breakdown of the yam, which would have happened in yours if you had kept your yams on the vessel another two days.

Q Did that other vessel also contain damage by fusarium rot?

A All yams have dry rot.

Q All yams have damage by dry rot --

THE COURT: Didn't it occur to you that this kind of damage, 1,900 cartons in June and a batch in July, might be referrable to the farming of these yams?

THE WITNESS: No, sir, your Honor.

THE COURT: Did you have the certificate there

also from the Department of Agriculture, in that situation?

THE WITNESS: On the previous vessel?

THE COURT: Yes.

THE WITNESS: No, sir. There we only had the ship's surveyors and our surveyors.

Your Honor, we only call the Department of Agriculture inspector, the inspector for the Mette Skou lot, because I could not get my surveyor when --

THE COURT: Weren't you getting a little nervous about importing yams from Colombia when 1,900 cartons turned up in a peculiar condition just a couple of weeks before this second batch?

THE WITNESS: Your Honor, a number of factors. We have a letter of credit and we are committed to lift a certain amount of shipments --

THE COURT: But you are not committed to lift bad merchandise.

THE WITNESS: Well, sir, they were not bad when they were shipped, your Honor.

THE COURT: How do you know?

THE WITNESS: In the first place, I have confidence in the supplier. I have visited Colombia. I was in fact in Colombia sometime in May of 1974, toward the latter part of May --

THE COURT: Did you see the 1,900 cartons packed in Colombia?

THE WITNESS: No, sir. But I saw the yams in general, your Honor, and the yams are properly inspected before leaving in order to comply with the regulations of the Colombian Department of Agriculture.

The regulations in Colombia are very rigid by the Department of Agriculture inspectors.

THE COURT: They're interested in shipping yams, not from restraining yams from going into the flow of commerce, isn't that so?

THE WITNESS: Sir?

THE COURT: I say the interest of the Colombian inspectors is to see that yams get out; the interest of American inspectors is to see that yams stay out.

THE WITNESS: Well, it is not --

THE COURT: Isn't that so?

THE WITNESS: No, sir. They insure not only Colombia but elsewhere, your Honor. They take every precaution to insure that the merchandise being shipped is of good quality and condition.

THE COURT: Go ahead, Mr. Hooper.

Q Are you an expert in fusarium rot?

A Not an expert, no, sir. But I am familiar

* * *

50,000 and whatever Jamaica yams you sold there would have to be added to the 50,000 to ascertain your cost against the $69,000 overall, isn't that so?

THE WITNESS: Yes, sir.

THE COURT: Now, what were your gross sales in July?

THE WITNESS: $139,048, but this covers July and August, your Honor.

THE COURT: How many cartons of Colombian yams does that represent?

THE WITNESS: I would say approximately 7,000, your Honor.

THE COURT: So that your cost of those yams was $70,000 for the Colombian and the balance of cost for the Jamaican or other source, is that right?

THE WITNESS: That would be approximately correct, your Honor.

THE COURT: What was your normal markup, 60 percent, 50 percent?

THE WITNESS: In accordance with the market, your Honor. We would try to get the maximum to offset bad markets.

THE COURT: But on what basis did you arrive at a norm? Was it a 50 percent markup or 40 percent markup or

60 percent markup?

THE WITNESS: Your Honor, we tried to get --

THE COURT: Subject to the market fluctuations?

THE WITNESS: Yes, sir, strictly subject to that.

THE COURT: But you had to start somewheres. What were you doing business at, a third up, 40 percent, 60 percent?

THE WITNESS: We tried to work on 50 percent.

THE COURT: 50 percent.

THE WITNESS: If the market warranted.

THE COURT: The figures seem to indicate 50 percent.

THE WITNESS: If the market warranted, your Honor. There were many times when we had to take a loss because of the market conditions.

THE COURT: Well, you weren't taking a loss; you were just taking a reduction in profit.

You considered it a loss if you didn't make 50 percent on every deal, is that it?

THE WITNESS: No, sir. We have sold yams at cost and below cost from time to time.

THE COURT: In 1974?

THE WITNESS: Yes, sir.

* * *

May 1974.

A Well, whatever quantities of yams were shipped, sir, I could not pay no more, no less than the figure I have already said. The price is fixed on the letter of credit. All the ocean freight is a conference rate. We do not employ nonconference vessels. All the charges are standard.

Give or take a nominal amount per carton for intangibles, which are not included on these charges --

Q So this letter of credit is an accurate report of the amount of money you paid for yams per carton, FOB Colombia, during May 1974?

A Definitely.

Q Could I have that letter of credit?

A It is a letter of credit together with numerous amendments.

Q The letter of credit and amendments which you have just handed to me, what period of time does that cover?

A It was opened on December 11, I believe, 1973, with the other expiration date on June 15, 1974, but prior to the expiration date we extended that to December 31, 1974.

Q So that during the entire year of 1974 you were paying $5 per carton for yams, is that correct?

A That is correct.

MR. HOOPER: I would like the letter of credit

* * *

MR. HOOPER: Any objection?

THE CLERK: No objection?

(Defendant Ove Skou Exhibit E and E-1 received in evidence.)

Q I would like to refer to Plaintiff's Exhibit 6, which is the U.S. Department of Agriculture report.

Now, trying to understand what you are claiming in damages here, am I correct that you are not claimint fusarium rot as damage?

A No, we are not claiming on dry rot, no.

Q And you understand that dry rot is fusarium rot, is that correct?

A Yes, that's correct.

Q Are you claiming damage for sprouting?

A To a point, yes.

Q What do you mean by "to a point"?

A Because it is one of the reasons for sprouting was the results of the -- one of the reasons was the result of the excessive heat and lack of ventilation which caused these yams to sprout in such a quick transit time.

Q Lack of ventilation would cause them to sprout?

A Yes, sir. Moisture, heavy moisture.

Q Would remaining in the ground three or four months also cause them to sprout?

* * *

A We were discussing a while ago keeping yams in the ground up to the end of March. Up to the end of March, yams will not sprout. Not under the ground or out of the ground.

Yams will sprout at certain periods of the year, even with ventilation they will sprout, but it is a very slow sprouting.

If yams were stored in the tropics, even well-ventilated, they would sprout; it would be a very slow sprouting. In other words, this, referring to this UDRSDA report, where he shows 1 1/2 inch in length, it would take possibly six weeks in the tropics for the yams to sprout 1 1/2 inches, even if they were well ventilated. However, lack of ventilation and excessive moisture caused by excessive heat will cause the yam to sprout.

Q Wouldn't you be more likely to find sprouting in yams late in the season as opposed to early in the season?

A Yes, but sprouting is not, as I mentioned before, is the, the cuase of damage was not because of the sprouting. Sprouting was caused as a result of the excessive heat. But I am not -- I have never complained too much regarding sprouting because sprouting could be snapped off.

Q So you are not too worried about sprouting?

A Not too concerned, no, sir.

Q And you are not worried at all about fusarium rot?

A Fusarium rot does not affect the yam.

Q That is what I mean.

And all the yams were firm and you are only worried about heat?

A All the yams that USDA saw were firm.

Q That is what I am referring to, Exhibit D.

A Yes.

Q You also testified, I believe, that you store yams, say they matured in November-December, 1973, is that correct?

A There is some in some areas they will reach a maturity in November-December, yes.

Q And they remain in the ground until March?

A Not all of them, sir. I can't say all the yams remain in the ground until March.

Q But this shipment remained in the ground until March?

A I didn't say this shipment did. I wouldn't --

Q What is the temperature in Colombia during --

A What part of Colombia?

Q The part where these yams came from, Cartagena.

A Which yams? The 5,000, the Mette Skou?

Q That is right.

A I never said that I knew from where all these yams came from.

Q But do you know what the temperature is in Cartagena, say in January of 1974 or January any year?

A Yes. Cartagena is a sea port on the Atlantic Ocean. And it is rather cool. It rarely goes above 85 degrees.

Q What about where the yams were grown? What is the temperature there?

A Most of the yams for export are grown in an area of Colombia called Bolivar, which ranges from a thousand feet above sea level and the flatlands and the hillside and the valleys, and the temperature will vary very widely.

Q Do you have any idea what the temperature was in the place where these yams were grown, the yams shipped on the Mette Skou?

MR. McCONNELL: Your Honor, the date, what temperature was it where they were grown, what time of the day, what month -- it is such a vague question, your Honor, and I don't see how the witness can answer it.

MR. HOOPER: I'll rephrase it, your Honor.

THE COURT: You don't have to for my sake.

You left it to the witness, you left him an open opportunity to tell you what the temperature was where these yams were grown.

Q What was the temperature range where these yams were grown?

A It would range widely.

Q What are the limits, where these yams were grown?

A From place to place, you would go down to about 60-some-odd degrees in the evening. In certain areas you may go up to the high eighties. Possibly at certain times of the year it may even reach 90.

Q But 90 would be about the limit?

A Well, sir, I don't live there and I have never spent a whole year in Colombia, but I do visit Colombia from time to time and I never experienced temperatures in excess of 90 degrees. I am not suggesting in any way that it is not possible to go above 90.

Q But you don't know that it would go above 90?

A No, sir. I have never experienced it, particularly in Cartagena, it definitely doesn't go above 90, to the best of my knowledge, because there is always a sea breeze, since the city is on the ocean front.

Q I would like to read -- do you remember testifying

at a deposition on January 23 in the office of Mr. Giallorenz

A Yes. I might have said that it may go up to 95 degrees in certain areas, yes.

Q Do you remember giving this testimony:

"Q Do you know how long the yam would take to decompose to a point where it is of nonmarketable condition in a temperature of, let's say 90 to 95 degrees" -- this is on page 46.

"A Well, yams is a tropical fruit and tropical weather conditions are prevailing temperatures are normally in the nineties. In Colombia, they would be around 90-95 degrees temperature, and yams would last in such tropical temperatures for nine, ten, eleven months."

Does that refresh your recollection of the temperatures?

A Yes, I made such a statement and I -- and I will stand by it now, but I must also state that yams are grown throughout the whole country of Colombia.

Q But your testimony now is that the temperature down there is 90-95 degrees?

A When you say "down there" --

Q In Colombia, where the yams were grown.

A As I said, where in the state of Bolivar, where most of the yams are grown for export, the temperature will

rarely go above 90 degrees, but there are other areas on the western side of Colombia where yams are also grown and shipped occasionally from a port of Buenaventura, not to us, but to other people.

THE COURT: Is there any record of the temperatur of these yams at the point of shipment, the FOB point?

THE WITNESS: I have no such record, your Honor.

THE COURT: Did the Colombian inspection service make any tests for the heat content of the yams as part of their test?

THE WITNESS: To my knowledge, no, sir.

THE COURT: So their concern is not with whether overheated yams leave the country?

THE COURT: Your Honor, I am familiar with the conditions in Colombia and it is not very easy or even possible for yams to get overheated before shipping, your Honor.

THE COURT: I know, but my question was a little different.

I say it is none of the concern of the inspection service as to whether or not overheated yams are being sent out of the country, is that right?

THE WITNESS: No, sir, because if yams are overheated sufficiently to cause damage, they would reject

such yams, your Honor.

THE COURT: Can you tell that a yam is overheated by just looking at it?

THE WITNESS: Yes, sir.

THE COURT: How?

THE WITNESS: You could stick your hand in the carton, your Honor, and you would feel the heat being developed in the carton.

THE COURT: Well, then, what was the necessity for your putting a thermometer in the yams when you examined them in New York?

THE WITNESS: To get the exact temperature, your Honor, but by putting my hand into the carton, I knew they were very hot. We use thermometers strictly to give us the exact temperature of the yam, which in this case was in excess of a hundred. I got 120 degrees.

THE COURT: Colombia is an exporting country, isn't it?

THE WITNESS: Yes, sir.

THE COURT: It is the national Colombian interest to export yams, as far as you are aware, isn't that so?

THE WITNESS: Their national interest to ship only good quality yams, your Honor; good condition. Also, your Honor, good quality yams in good condition, your Honor.

THE COURT: All right.

Q Now, I believe we have your complaints about these yams narrowed to heating and ventilation, is that correct?

A My complaint?

Q Right.

A Is that I lost about $55,000 here.

Q You said heat will damage yams?

A Heat will cause -- excessive heat will cause damage to yams.

Q Will heat alone damage yams?

A It depends how hot.

Q How hot does the temperature have to go for the heat alone to damage yams?

A Well, my experience is that I have seen and I have exported and I have sold yams in excess of 95 degrees, but yams, 95 degrees and slightly higher, if they have a good ventilation system, if they are well ventilated and aired, there is no danger to such yams.

Q So you have to have bad ventilation and high heat; is that what you are saying?

A Yes, sir. Excessive heat, as a matter of fact, sir, would only be caused due to lack of ventilation, because if the yams are ventilated with the prevailing

temperatures, yams will never be overheated.

In the case of the Mette Skou as an example, if I may, if the yams were ventilated with the prevailing sea temperature at sea, which would be in the seventies, possibly in the low eighties, the yams could never develop to 120 degrees temperature.

Q So that what you are saying, if some blower pumped air to the yams into the deep tanks and let bad air escape and kept constantly pumping in air from the outside, these yams wouldn't have been damaged, is that correct?

A If you have a continuous amount of air circulation that is fresh air coming in, circulating throughout the cargo and the boat, the stale air which developed into gases, an exhausting system to take that out, you would never develop it to excessive temperatures.

Q Before we talked about the amount of yams you yourself and your companies import into the New York area.

Can you give me a rough estimate of the number of cartons that are imported into the New York area from everyone in, say, June 1974?

A In the last three years I have not kept such a record. I used to, but as I mentioned before, in the office of Vana alone I had five employees and I lost most of those employees.

* * *

are familiar with the market, you will know that the stores are one after another, store 29, store 28, 27, 26. The only -- about 30-feet wide or 40-feet wide and it is very easy to cover twenty stores in a matter of about one hour, and I was going from one store to another, so if I parked the trailer by one store, I could cover, if I backed in trailer to one store, I could cover three or four customers at the same time.

Q Was this in the Hunts Point Market?

A No.

Q This is in the Bronx Terminal Market?

A Correct. There is no market for this merchandise in the Hunts Point Market.

Q Now, to try to cut things a little short, you also testified that you eventually dumped some of the yams.

A Yes. Not some. Most of it.

Q Do you have Plaintiff's Exhibit 4 -- 3 and 4?

I show you Plaintiff's Exhibit 3, a bill from Acme Carting Company.

A Yes.

Q What was that for?

A This is a bill dated July 10, 11, 12 and 13. Removed from Stone Avenue premises 1,816 boxes of yams Andina.

Rmoved from storage, store premises, 1,800 boxes of yams Andina.

Q And how much was the charge for that?

A $477.85.

Q And that was for just the removal of those four days?

A I will -- I have, I have been testifying under oath and I will testify that I was present when I ordered these people to pick up these yams to be destroyed.

These were the 1,800-some-odd cartons which were inspected at the American Banana and West Indies on July 9 by my surveyor and the surveyor for the carrier.

Q Did you pay that bill?

A The -- I did not have a check with me. These people demanded cash because he was in addition to their normal carting, so they hand made out the bill to West Indies, which I had not noticed, and I issued a West Indies check to the payment for this amount which was West Indies charged me for reimbursement.

Q Whose paid stamp is that that appears on Plaintiff's Exhibit 3?

A This was done by the bookkeeper up there and on the left-hand side I have my own handwriting, West Indies check number 6328.

Q Whose paid stamp is that?

A This is a West Indies stamp.

Q West Indies; it is not the Acme stamp?

A No. This is West Indies.

Q Does Acme Carting regularly pick up rubbish from West Indies?

A Yes, in the course of their daily routine pickups.

Q And how often do they pick up rubbish?

A Well, they have a contract, or they are under contract -- permission, I should say -- by the Department of Markets, at that time of the year, that they had to stop each and every store at least once a day and any merchandise decayed or to be dumped they had to pick up, but this --

Q And isn't it true that you paid $40 every two weeks for this service?

A That may be so.

Q And isn't it also true that you allowed these bills for $40 every two weeks to mount up for a while?

A No. The $40 every two weeks is if you have stuff to dump. I don't always.

Q Didn't you let them mount up to about four or $500 and then pay them for this period?

A I don't think so.

Q Don't you now owe $530 to Acme Carting?

A That I don't know. I don't check the records.

Q Didn't you let the bill run up until it was about $477 in this case? And then pay it with Plaintiff's Exhibit 3?

A This, I never paid West Indies' bills. This bill here was, this check was signed by myself because they demanded payment right there and then and I did not have a check for Vana with me, so I gave them a West Indies check for which they charged us.

Q Did you dictate the contents of that bill to Mr. Croce, the head of Acme Carting?

A I never heard of that name. I called Acme because we cannot bring anyone into the market other than the people --

Q But my question was, did you dictate the contents of that bill to Mr. Croce?

A No. I never met Mr. Croce. Never met the man.

A Finally, Mr. Sousa, you mentioned a previous claim in May of 1974. What ship was that?

A I didn't say May.

I had two claims from Colombia besides this one, two claims from Colombia in 1974. One for about 400-some-odd cartons, which the vessel refused to deliver on the weekend and kept it on the pier and the temperatures went

down to 20 degrees over the weekend and they were frozen. That was about 400-some-odd cartons.

Q What date was that?

A That was, I believe in March.

Q And the other claim?

A The other claim was, I think, on June 12 on the Prudential Lines. I don't know the exact amount of the claim, but I think it is 1,900 --

Q Do you remember the name of the ship?

A Yes. The Santa Cruz.

MR. HOOPER: I have no further questions.

CROSS-EXAMINATION

BY MR. MULROY:

Q In answer to Mr. Giallorenzi's questions, Mr. Sousa, did I correctly get the impression that yams that are fresh are more susceptible to infestation or dry rot, as distinguished from cured yams?

A Sir, I may have to ask the Court to repeat that question.

Q Well, let me ask you, what does "fresh yams" mean to you?

A Fresh yams are fresh yams, sir.

Q Does "fresh yams" mean recently out of the ground, or --

* * *

store mainly because of shipping difficulties where we didn't have regular shipping, we used to store yams for two and a half, three months, yes, sir. But this is prior to 1974 and not Vana Trading.

Q So that you wouldn't expect to have any damage occur to the yams because of the fact that it took an extra week to get them off the pier, is that true, under normal circumstances?

A No, sir. As a matter of fact, we like to keep yams on the pier.

Q **Save** storage charges, right?

A Not only that, it is well ventilated, it is right on the sea, you have excellent ventilation.

Q Now, in connection with these yams, do I understand that you knew when you went to the pier for the first time on July 2 and you saw those yams being discharged that you knew that these yams would not be good for marketing?

A Well, when I -- not immediately -- when they start coming off at excessively high temperatures, yes, sir, I knew they could not be marketed.

Q Now, some of the yams that came out of the same place, some of the yams that came out of the same area on board the vessel on July 2, did you find that some of these yams seemed to be in fairly good condition and the

temperatures were normal?

A Yes. This is what is so unusual about this case.

Q Now, among these yams that you found to come out of the ship in good condition, do I understand from your deposition that you found what appeared to be 251 sound cartons come out of the ship?

A That may not be so because we were looking with the intention of repacking, to salvage as much as we could -- was to look for those that we found at 80 degrees and some at 90 degrees.

Q Did you put aside approximately 251 cartons of what you expected would be sound yams?

A Well, we didn't put aside because we didn't know where they were. The were mixed up with the 5,000.

Q Did you segregate them?

A Well, those 251 definitely were not on the 1,800 that had gone to the Bronx as the first lot.

So we assumed that those eighties, those yams that were 80 degrees or 90 degrees, I even found some yams coming off the ship at 78 degrees on July 2, when we started to repacking it was with the intention of finding those that were in the low temperatures, but looking for yams, this is a week later and naturally by then all the temperatures were normal. The ones that had been 120 or

more were the same temperature as the prevailing temperature of that day, so we had no way of knowing where the 250 were.

THE COURT: I don't believe you have answered the question. You were asked whether some yams in the shipment were in good condition and you said yes, and then you were asked how many cartons and you didn't answer that, and that was followed by the question, were the 251 cartons in good condition and you didn't answer that.

Now, what proportion of the yams in the shipment were in good condition?

THE WITNESS: Your Honor, we repacked 251.

THE COURT: That is not my question nor counsel's question.

THE WITNESS: That we have --

THE COURT: What proportion of the yams in the shipment were in good condition?

THE WITNESS: That we have found, under 186 cartons.

THE COURT: 186?

THE WITNESS: Under 186 cartons, your Honor.

THE COURT: What did you do with the 186 cartons?

THE WITNESS: Those were the -- part of the lot of the 251 which we repacked and sold them to West Indies, who in turn repacked them; they lost 65 cartons in repacking,

leaving them with 186, and then they repacked another two or three times and they ended up with under 186, your Honor, but I am not suggesting, your Honor, that there weren't some more good yams in that lot. It just was prohibitive for us to go through 5,000 cartons to find a few good ones.

THE COURT: Well, it may have been prohibitive, but if you are trying to collect for something that you didn't do, what are these defendant to do about it?

THE WITNESS: I did try, sir.

THE COURT: Well, you did try, but a good college try is not the same as proving what the actual extent of the damage was. You are telling me that you don't know what the extent of the damage was because it would have been prohibitive to find out.

THE WITNESS: Your Honor, we had delivered 1,800-some-odd cartons to the Bronx on July 8. Out of the 1,800 we could not salvage one.

THE COURT: That accounts for 1,800 out of 4,800. What about the other 3,000?

THE WITNESS: Out of those, we took it to a warehouse and we tried to salvage. We unloaded the first two trailers at a cost of about $1,400, unloaded and checked each and every one, every carton that came off the two trailers, that came off the ship. What we thought was good

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cartons and discovered all of them were firm.

THE WITNESS: I did not, no, sir.

THE COURT: Did anybody?

THE WITNESS: The USDA made an inspection, your Honor.

THE COURT: That was just a sample test case, wasn't it?

THE WITNESS: Sir, he was there for a long period of time.

THE COURT: It was a sample test check. He didn't go through 5,000 cartons.

THE WITNESS: He could not, sir.

THE COURT: Then it is only a sample test check.

Who was going to vouch for the fact that good yams weren't going out with the bad yams?

THE WITNESS: As I said, your Honor, we checked 1,800-some-odd cartons and we checked almost 3,000 cartons in the warehouse, not only myself, but the various surveyors, your Honor, and they, other than the 251 which we were able to salvage, what was left from the 251, your Honor, of which 65 were repacked and rejected --

THE COURT: Well, you have worked out your answer to the whole 5,000, but when you started answering

the question you made it very clear to me that some of the yams in the shipment were in good condition and that you weren't able to go through all of the cartons because it would be prohibitive. Now you are giving me an explanation about having done the whole job.

Which testimony am I expected to accept?

THE WITNESS: Your Honor, it is nearly impossible to check each and every carton to find the ones that were 80 degrees because I could show you a yam, your Honor, and you may have a small spot --

THE COURT: I grant you that it is a difficult job and I also grant you that it may be a prohibitive job. At the same time, how can I direct the defendants to pay you money on the basis of what you didn't do?

THE WITNESS: Well, we did do, your Honor. I did not go through every carton towards the end simply because what we were repacking one day had to be repacked the next day, so even though they were good when we repacked, the following day, because of its being exposed to excessive heat --

THE COURT: It may have been exposed to your process, too, of whatever you were doing there. If they were good one day and they were firm and your experience indicated that you had good yams on hand, maybe you did

something to them that affected them.

You see, you are leaving open a lot of question areas for me.

THE WITNESS: Your Honor, there was, at that time of the year, there is no reason not to salvage as many yams as possible because that is the best market of the year, your Honor.

THE COURT: If that is so, then why do you say it was prohibitive, if it was that time of the year?

THE WITNESS: Because, your Honor, we went through the first of two trailers thoroughly. There were about eight men repacking the yams, unloading and repacking them.

Out of, I think it was about, something like 1,900 cartons, out of those two trailers, your Honor, we salvaged 251, which we dispatched --

THE COURT: Well, that repeats what you have already told me. Thank you. Go ahead.

Q With regard to the 251 cartons that appeared to be normal and within the normal temperature range which you observed on July 2 -- is that correct?

A Yes, sir.

Q Am I right so far?

A That is correct.

Q Now, those 251 cartons, is it true that those 251 cartons were the last truckload to be removed from the terminal?

A No, sir.

Q Were they removed on July 11, 1975, by a truck of the West Indies outfit at 5:35 p.m.?

A We picked up 251, yes, which was the remaining of the ship, the remaining lot. That truck went in to pick up 269 cartons, which was the balance of the shipment, but there were -- 18 could not be found, so he loaded 251 cartons, but that doesn't mean those are the 251 which were repacked because those 251 had to go into fumigation and we were repacking at about the same time.

Q Is it true, sir, that you hired the trucks that went to the pier to pick up the cargo?

A Yes.

Q Is it true that those trucks were actually loaded by personnel employed by you?

A Loaded where?

Q At the pier?

A Not all of them, no, sir.

Q The trucks that were loaded on July 3, 1975, were they loaded by your employees?

A One probably was, yes, but the one or two

trailers we had were unloaded from ITO.

Q If there were four trailers loaded on July 3, 1975, how many were loaded by your personnel?

A I don't think we loaded four trailers on July 3.

Q Well, how many do you think were loaded by your personnel?

A I think we loaded three trailers.

Q On July 5, did you load a trailer?

A We had left trailers on the pier from July 3. I don't recall if we loaded on July 5.

Q On July 8, did you load trailers with your personnel?

A I don't remember at this time if we loaded.

Q Did you at any time receive any objection from International Terminal Operating Company to your using your own labor to load your contracted trucks?

A We were given permission on July 3 that --

Q To use your own labor?

A That we could go out and get people to help load our trucks, only one truck.

Q At any time did International Terminal Operating Company object to your using your own labor to load your trucks, yes or no?

A They never objected. There is more to that.

Q Now, in connection with your dealings with the International Terminal Operating Company, do I understand you to have testified from your deposition that you were aware of the New York Terminal conference tariff for truck-loading and unloading and this was the basis for your contacting ITO to load your trucks?

A If I said that, I don't remember, sir. I am familiar --

Q Are you aware of the New York Terminal conference for loading and unloading?

A Not the regulations.

Q But are you aware of the existence of the tariff?

A I know what we do when we have to go to the pier.

Q Are you aware of the existence of the New York Terminal conference tariff?

A I would presume there is a conference, a tariff.

Q And you presume there was a tariff at the time that this cargo came in on the Mette Skou, is that correct?

A Yes.

Q Did you receive an invoice from International Terminal Operating Company in connection with services rendered or facilities made available on the Mette Skou?

A Yes.

Q Do you have that invoice?

A My attorneys have it.

MR. MULROY: Could I have that?

THE WITNESS: Not this attorney, another attorney because I refused to pay that invoice and I turned it over to the attorneys to sue for additional expenses which I had to incur as a result of your failure to supply labor and refuse to -- failure to load our trucks.

Q So you hired a law firm to assert a cause of action against ITO, is that correct?

A Only insofar as the extra expenses incurred for not -- your failure to load the trucks as you requested at the pier.

Q Did you finally settle that lawsuit?

A Yes.

MR. MULROY: I ask that this be marked for identification.

(Defendant ITO Exhibit H marked for identification.)

Q Could you tell the Court what the amount of the settlement of that litigation was?

A I believe the attorneys agreed either $900 or $1,000 settlement.

Q I would like to show you a pleading in the

Civil Court of the City of New York in an action entitled International Terminal Operating Company, Inc., v. Vana Trading Company, and particularly I draw your attention to the second page, setting forth a separate defense and counterclaim, and I draw your attention to the fact that this pleading appears to emanate from a law firm, Sillik Polayes.

A I am familiar with the proceedings. I don't know --

Q Are you familiar with that?

A No, sir.

Q Would you look at that document?

A Not in detail, but I was told about it.

THE COURT: Who paid who the $900 or the $1,000?

THE WITNESS: We paid ITO, your Honor.

THE COURT: I didn't understand that from the previous testimony and that is the reason I asked the question.

Q Did you authorize that answer be filed by those attorneys?

A I told my attorney to take whatever action necessary.

Q Was that pleading filed on your behalf under your instructions?

* * *

the attorney to take the steps, not the word for word, your Honor.

THE COURT: That is what he wants you to say.

THE WITNESS: Not word for word.

Q But this was an authorized action by your attorney?

A Not word for word.

THE COURT: The legal actions were the lawyers', but the instructions were yours?

THE WITNESS: Yes, sir.

MR. MULROY: I would ask that this document be marked in evidence.

MR. McCONNELL: I guess I can have no objection to a pleading filed in court which is a matter of public record, your Honor.

THE COURT: I can't respond to that kind of a speculation.

Do you object to it or don't you?

MR. McCONNELL: I object to its entry as being not germane to this case, your Honor.

THE COURT: I'll look at it. It might have some bearing on estoppel problems, I don't know. I better take a look at it.

MR. HOOPER: We have no objection.

MR. GIALLORENZI: We have no objection.

THE COURT: Pass it up here.

This is directly relevant to the witness' testimony.

The objection is overruled.

(Defendant ITO Exhibit G received in evidence.)

THE COURT: The reporter would like to have a short recess.

(Recess)

Q Did your attorney, Mr. Sillik Polayes, send you a release when he settled the case with ITO?

A Yes, he did.

Q And did you approve of the settlement?

A I signed it, yes.

Q Well, did he send you a release that he obtained from ITO?

A I signed a release, yes.

MR. MULROY: I ask that this document be marked.

(Defendant ITO Exhibit H marked for identification.)

Q I show you this document that has been marked ITO Exhibit H for identification and I ask if you have seen that document before, if it might have been sent to you by

* * *

MR. GIALLORENZI: Were given to whom? Were given to me, did you say?

I was talking about the original notes, Mr. McConnell. The original notes of the temperatures; I was not talking about that document which you are now holding.

Q Mr. Sousa, I would like to show you this document and ask you when this document was compiled and from what material it was prepared.

A This was compiled approximately two or three weeks after the vessel arrived, possibly a few days more, and it was compiled from notes that I scribbled down on pieces of paper and then I make one memorandum covering whatever notes I made during the course of that particular problem.

Q Does that memorandum show the temperatures which you found of the yams at the army pier?

A Yes, it does, and I would like to read a paragraph here, if I may.

Q I would like you to read the paragraphs which concern the temperatures which you found at the pier.

A "I would estimate that no more than 250 cartons of the yams on the top layers on the ship" -- I am sorry -- "I would estimate that no more than 250 cartons of yams on

the top layers in the shipshold were of normal temparature. USDA inspected at about 3 p.m. on July 2, 1974, and found temperatures from 80 to 100 degrees plus Fahrenheit.

"The USDA inspector, when asked to clarify his reading of 100 degrees plus Fahrenheit said that his thermometer could only register up to 100 degrees" --

MR. GIALLORENZI: Your Honor, I would like to object to this further answer because he is just repeating what he has previously testified.

THE COURT: That is all right. He is reading from a memorandum. The memorandum was called for by you and now they can bring out what is contained in it.

A "And he further stated that in his opinion they were sufficient because any produce reading 100 degrees Fahrenheit would be worthless because the texture would break down."

Q Does that cover all the mentions of temperatures of yams which you took at the army pier?

A No. I only read this paragraph to clarify USDA policy, why they only carry thermometers reading up to 100 degrees.

Q Would you read the relevant portions, the other relevant portions concerning temperatures which you took?

A "When cargo started to come off the ship early

p.m., I believe a few were discharged before noon, the temperature pulp in the seventies and eighties. However, by 2 p.m. it was over 100 degrees Fahrenheit.

"At 2:30 p.m. and thereafter the temperature coming off the ship was up to 120 degrees Fahrenheit. Both Juan Inglesia and myself found the temperatures of up to 120 degrees Fahrenheit."

THE COURT: Do you show there how many cartons were up to those degrees or was that some isolated situation?

THE WITNESS: I do not show the amount of cartons your Honor.

THE COURT: It is perfectly clear that all of them were not up to 120 degrees, isn't that right?

THE WITNESS: That is correct, sir. I, in my -- from reading from my notes, your Honor, I saw that I would estimate that no more than 250 cartons --

THE COURT: Normal.

THE WITNESS: Yes, sir.

THE COURT: I have that.

Q Mr. Sousa, how high did your thermometer read?

A 120 degrees.

Q Were some cartons in your opinion higher than 120 degrees when the thermometer would hit 120?

MR. GIALLORENZI: I object to this question, your Honor.

THE COURT: Overruled.

A My thermometer reading only 120. It registers 120 but it stopped at 120, but it was an indication that it was even higher.

THE COURT: Do you record that indication in your notes?

THE WITNESS: Not in here, your Honor.

MR. McCONNELL: Your Honor, he did record the statement both Inglesia and my --

THE COURT: Let the witness testify. I asked the witness whether his statement records an excess of over 120 degrees and he said no.

THE WITNESS: I'm sorry, your Honor. I started to read -- both Inglesia and my thermometer could only register up to 120 degrees and therefore possible the yam pulp temperature could be higher than 120 degrees we found.

Q Now, Mr. Sousa, what action did you take at the time that you found these high temperatures?

A Well, I called my surveyor and he was not available. He had been on board the vessel prior to its loading.

Q Prior to its loading?

A Prior to its unloading. When I saw the temperature

* * *

Q What is the next arrival?

A The Santa Helena, around March 15, 3,000 cartons. Ciudad Cuenca, the claim in question is on the Ciudad Cuenca, involving Mr. Giallorenzi and yourselves and not on the Santa Marta.

MR. GIALLORENZI: It doesn't involve me. I am the attorney.

A Grancolombiana.

Q In other words, the Santa Marta that you mentioned before, there was no claim?

A There is no claim on the Santa Marta. This is the Ciudad Cuenca.

Q All right. Continue, please.

A Then the Ciudad Pasda, 2,000, arriving inNew York around April 20.

Q Was there any claim on that vessel?

A No.

There is the Santa Barbara, 5,000, arriving in New York May 2. There is another Santa Marta, 3,000, arriving New York early in May.

Q Were there any claims on those two vessels?

A No. There is the Santa Helena, 2,000, arriving in New York mid-May. There is the Santa Cruz with 5,000 -- there is no claim on that one either -- Santa Cruz, 5,000,

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arrived in New York on June 12.

Q Is there any claim on that vessel?

A Yes. One of the hatches was overheated.

Q You briefly described that claim before and I would like to go into that just for a moment.

Can you recollect any details with respect to how that cargo was stowed, what hatches it was stowed in?

A Yes. If we check through this file here you will see a letter that I sent to Prudential Grace Lines regarding this vessel. After this vessel loaded in Cartagena, he interrupted his normal schedule and went into the port of Buenaventura where it stayed f an extra week.

When I discovered this delay, I telephoned and notified the people in charge of that particular handling of the cargo operations and asked that inasmuch as the vessel will be delayed for a week or ten days, if you would instruct the vessel to give that vessel the maximum ventilation where the yams were stowed and the reply to me was it wouldn't be necessary, the captain knows, the vessel knows how to handle it.

However, when the vessel arrived in New York we found one lot to be in perfect condition; the second lot where it was poor stowage down in the bottom of the vessel with cargo stowed on top of it, sufficating it --

Q You described it as one lot and then another lot. Were they all from the --

A It was loaded in two separate places aboard the vessel. One lot was well ventilated and arrived in good condition. The second lot was loaded in another part of the vessel which was, the ventilation was completely blocked off.

Q Who was the shipper of those?

A Prudential Lines.

Q The shipper?

A Arturo, Exportadora Andina. When those yams arrived in New York, because of the extended transit time and having been affected by excessive heat, the damage to the yam was already visible. They arrived decayed. The decay was visible.

Q Were you able to successfully sell the lot that did not arrive in damaged condition?

A Whatever was not damaged we sold it, no problem, at good prices.

Q What was the next vessel that arrived?

A The next vessel was the Felipe. That arrived in Philadelphia -- we took delivery in Philadelphia around June 25.

Q Was there any claim on the Felipe?

A I believe I put in a claim for seven cartons

* * *

for two weeks until the following vessel arrived and I had about, possibly, over 3,000 on hand from the shipment a few days before, so naturally I held, instead of pushing these 3,000 immediately, I held back for distribution for the next ten days to two weeks.

Q Mr. Giallorenzi and other counsel have asked you a number of questions relating to the condition of this shipment at the time that it was shipped in the sense that they were asking whether it was possible that various damages could have occurred, and I would like to ask you whether or not you were in Colombia during the spring of 1974 at any time.

A Yes, I was.

Q Could you tell us when?

A It was sometime in May. I was in Colombia three times in 1974 and I was the last time in Colombia in '74, covering the '74 season, was sometime in May of 1974.

Q Now, Mr. Sousa, you did not see this shipment being packed, did you?

A No.

Q Did you visit the warehouse after Arturo Mejia?

A Yes.

Q Would you describe what you saw?

A Well, I saw yams in storage, which eventually

were shipped to me here in New York.

Q Did you see, or did you see on any occasion during any of your visits to Colombia the method in which the yams are packed?

A Yes. I always make my trips to coincide with one of their shipping or packaging and Exportadora Andina --

THE COURT: The only question you were asked is, did you see how the yams were handled in the warehouses.

A Yes, sir, I have seen how they pack the yams.

THE COURT: Try to contain yourself to the answers. Leave it to your lawyer to bring out the matters without intruding with a lot of side information.

THE WITNESS: Yes, sir.

Q Is any examination made of the yams at the time that they are packed?

A Yes.

Q Would you briefly describe what kind of an examination is made?

A Yams are first examined for being sound, to make sure there are no holes or damage. Then it is wiped off to clear all the soil off the yam. This is done with a rag. It is then inspected again by another inspector or inspectors before being wrapped to be stowed into cartons.

Of course if there was a sprout at the time

of shipping, it would come off.

Q They would take the sprout off before shipping?

A Yes. The inspector of the Department of Agriculture in Colombia would not permit yams, if they were sprouting, would not permit the export of yams if they were sprouting.

Q Do you know that of your own knowledge?

A Yes.

Q Mr. Sousa, with respect to the exhibit which we have here, is there any fusarium rot, or should I say dry rot and that?

A Yes. All this is -- this is dry rot. This is the skin. The skin will eventually turn into dry rot. This is part of the damage, some bruise or --

Q What affect does that have on the edibility or salability of the yam?

A It has nothing because the housewife peels the yam before cooking.

Q Is the skin of that yam normally edible or is it usually eaten?

A No, of course not; it is peeled.

Q Before cooking or after?

A Before cooking. Incidentally, this yam was cut, the top of this yam was cut down there someplace and you could

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Q Do you know how much you would have been able to salvage if you had taken delivery on the 1st, 2nd or 3rd?

A Well, some were delivered on the 3rd. How much more I would have salvaged if we were given delivery on the 1st or 2nd, I can't answer, but it certainly would have been far more substantial than we did.

Q With reference to loading a trailer such as you sent down on July 2, how long does it take to load a trailer with cartons of yams?

A This all depends how fast the pier labor wants to work.

If they are -- if they want to work reasonably, we could load a trailer in about two hours; possibly three, maximum three hours.

Q Do you know the temperature on July 2 at New York City?

A Not exactly, sir, but it was around, on July 2, it was around the high eighties, very low nineties.

Q High eighties, that was the maximum on July 2?

A Yes, sir.

Q That is the day that you recorded the temperatures of 120?

A Yes, sir.

Q Now, you rendered an invoice, I believe, to

American Banana, which was marked in evidence.

Did you receive a check in payment of that invoice of around I think it was $96,000 or $97,000?

A I think July accounts were settled sometime in August or September and they were paid in three different checks.

Q Do you receive many of your payments in cash?

A We never receive cash. It is all checks.

Q Are you in partnership with Andino, the shippers of the yams, which forms the substance of this suit?

A When you say --

Q Do you have a joint venture with them or do you have an ownership in the company?

A No, sir. We buy strictly on an FOB basis.

Q When is the fumigating done? Before it goes to the warehouse in the Bronx or after it is received in the warehouse in the Bronx?

A By USDA requirements, when yams leave the pier they must go into a fumigation warehouse where they are fumigated.

Q Is that a heated warehouse?

A Heated in the winter, yes, sir, and in the summer they, one of the warehouse employs fans to ventilate th

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not be a proper element of damages, but we will worry about that when we get to the subject of damages.

Q Yesterday you told us that you had some damaged yams come up from Santa Cruz, is that correct?

A That is correct.

Q Do you have the surveyor reports with you from that shipment?

A I believe so, yes.

Q Could I see those, please?

A Yes.

Q While we are looking for these reports, I think I can continue on to speed things up a little bit.

Yesterday you produced some invoices which indicated, or records which indicated that you sold some yams or all the yams, I believe, to American Banana Company; is that correct?

A I didn't say all the yams. I have exchanged and sold yams to West Indies, period.

Q But when I asked you for records that would indicate all the income that you received from yams in May, June and July of '74, you produced records showing that you had charged American Banana a certain amount.

Does that represent all the income Vana received for those yams?

* * *

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What is the reason for these times?

A Well, if we have, let's say a shipment today, and I have instructed him to issue such instructions on a vessel leaving today and he should fail to do it or I don't receive a copy of those instructions, then I will immediately get after him and ask him why were not said instructions given to the carrier in writing.

MR. HOOPER: Now could I see the surveyor reports for the Santa Cruz.

MR. McCONNELL: I believe that is the one. (Handing)

MR. HOOPER: I would like this document, labeled McCabe Inspection Service, Inc., marked for identification as the next Ove Skou exhibit.

(Defendant Ove Skou Exhibit I marked for identification.)

Q Mr. Sousa, did you have any other damage claims besides the Santa Cruz and the Mette Skou for 1974 concerning yams?

A Yes, sir. There was one for 400-some-odd cartons on the Ciudad Cuenca.

Q Do you have the survey report for that claim as well?

A I believe so.

* * *

labor? Is that your complaint?

A No, sir.

Q In other words, was the pier adequate from the standpoint of ventilation, let's say?

A From the point of view of ventilation, yes, sir.

MR. MULROY: I have no further questions.

THE COURT: What did you mean when you said there was damage caused by the pier? I don't understand the previous answer in light of the last response.

THE WITNESS: Your Honor --

THE COURT: What did the pier do to your yams?

THE WITNESS: The stevedores used cargo slings to unload the yams. They would load 40 or 50 cartons of yams into the cargo slings, swing the cargo slings over onto the pier, and then release two ends of the sling, and then pick up from the other two ends, and the cartons came tumbling down from, in some cases, from a height of 20 feet, your Honor.

THE COURT: Did that overheat them?

THE WITNESS: No, sir, but it did damage some of the packages.

THE COURT: It damaged the packages.

THE WITNESS: Yes, sir, and some of the contents in the packages as well, sir.

THE COURT: To what extent were the contents damaged by the method of handling yams by slings?

THE WITNESS: Well, the carton would collapse, your Honor.

THE COURT: How many cartons collapsed?

THE WITNESS: Your Honor, I was so busy testing temperatures and going from one place to another, I did not keep count of it, sir, but there were numerous cartons that collapsed on the pier, resulting in the contents spilling over and becoming somewhat damaged.

THE COURT: All right. Doesn't sound like a basis for a claim if you were busy in other directions and didn't keep count of what happened.

All right. Anything else?

THE WITNESS: Your Honor, may I say, sir, at that time I thought the damage was academic, whether it was damaged by inside the vessel or by the stevedoring company, sir.

THE COURT: That judgment on the law may be reviewable.

THE WITNESS: Sir, I am only a businessman.

THE COURT: I know, but you were making legal judgments.

THE WITNESS: Well, I wasn't too keen or too

interested how the cargo came off the ship. I was interested what I could do to salvage it.

THE COURT: People who lack interest in the appropriate way sometimes find that they don't have claims to present. All right.

Anything else of this witness?

MR. MULROY: No further questions, your Honor.

THE COURT: You may step down.

(Witness excused)

MR. McCONNELL: I call as my next witness Austin J. McCabe.

A U S T I N J. M c C A B E, J R., called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCONNELL:

Q Mr. McCabe, by whom are you employed?

A I own and operate McCabe Inspection Service Incorporated, established March 1, 1936.

Q What is the business of McCabe Inspection Service?

A Inspection of the transportation and storage, quality and condition and damage and loss and ventilation

* * *

tank other than two holes, as I remember, in the top.

Q Was one of them a manhole cover?

A No, no. There was a manhole but as I recall there were two holes probably six inches in diameter.

Q How was the cargo stowed in the tank that you observed?

A It was stowed in blocks with spaces between the blocks, and of all ridiculous things to do, they used plywood to cover the area that would have provided ventilation.

Q Are you speaking now of the dunnage?

A Yes.

Q Would you describe further the dunnage which you saw?

A The dunnage which I saw was plywood sheets, plywood, and the cargo on the top was in better condition and with better temperatures and at the time that I was in there in the beginning, the other cargo wasn't accessible and I had to go somewhere else. I got a call from my --

Q Would you describe how the dunnage was laid, this plywood dunnage which you saw?

A It was laid extending between the layers over the space that they had thought would ventilate the cargo, I presume, and blocking that space, interfering with circulation of air.

They just suffocated the yams.

Q What is the purpose of ventilating yams?

A To give them oxygen and to remove the gases and heat which they themselves give off, to provide -- they are a living being, they live and breathe.

Q What effect did this dunnage have on the yams?

A Well, the dunnage, combined with the poor judgment of putting them of all places in the deep tank, suffocated them.

Q Mr. McCabe, have you examined shipments of Colombian yams for Vana as well as other importers?

A Yes.

Q What type of containers are they carried in?

A Full telescope, fiberboard boxes.

Q Are you aware of any wooden boxes being used in the trade from Colombia?

A No, positively not.

Q Did there come a time when you returned to the pier?

A I was advised by my office that Mr. Sousa had taken temperatures and found them higher than I had found and wanted a resurvey, to verify the temperatures.

Q And did you return?

A I did.

Q And when was that, sir?

A It was -- either late that day or the next day. I believe it was July 3.

Q And were they still discharging yams at that time?

A Yes, sir.

Q Did you take any temperatures?

A I took, I always take many temperatures.

Q Would you state what temperatures you obtained?

A As I recollect, say on the first day they run about 70 to 90 degrees, and on the return about 90 to 120 degrees.

Q These were pulp temperatures?

A Yes, sir.

Q Of the yams?

A Yes.

Q Do you recollect what the atmospheric, the air temperature was?

A It was warm. I've seen the weather report but I don't remember the exact temperatures, but they were high the second day.

Q Were the yams hotter than the air temperatures, prevailing air temperatures?

A Yes.

Q In connection with the inspection of yams, have

you seen fusarium rot?

A Yes.

Q Is that, what is known as fusarium, dry rot?

A Yes.

Q How does that affect a Colombian yam?

A Well, you can jsut cut it off when you peel it and use the yam.

Q Does heat affect Colombian yams?

A Yes.

Q How does it affect them?

A Heat affects the yam in that it increases the rate of respiration. For each one degree you increase the temperature, you increase the respiration and it promotes the heat, combined with the **warmth,** with moisture, it promotes decay and sprouting.

Q Would you tell us how your inspection was conducted when you returned on that second time, how many boxes you inspected and so on. Give us the procedure that you carried out.

A I don't keep a record of how many boxes I look at. I inspect them until I feel that I have looked at sufficient quantities for a true representation of the shipment.

Q Did you find the high temperatures to be prevalent in a representative majority of the samples that

you took?

A Yes.

Q Now, Mr. McCabe, have you inspected any cargos of yams or other fresh vegetables that have been carried in deep tanks before?

A Never have found them in deep tanks before.

Q Did there come a time when you saw any portion of those yam cargos again?

A July 9.

Q And --

A And July 15.

Q Let's take July 9 first.

Where did you inspect them?

A Store 3, Bronx Terminal Market, and pier 2, Bronx Terminal Market, West Indies Produce and American Banana.

Q Were you there in the company of any other surveyors?

A Howard Cray of Captain Robertson.

Q What was the purpose of your inspection at that time?

A To determine the condition that they were then in. And to get verification by, of the marine surveyor representing the steamship company.

* * *

Q The damage that you saw on the 9th, can you tell us what it was indicative of?

A Well, it was indicative of improper transportation temperatures and bruising while they were unloading them. Of course, knowing that they were bruised when you were unloading, you knew that that causes some decay, but after it is decayed you don't see the bruise.

Q What is the customary method of disposition of such commercially worthless stock?

A To dump it.

Q Now, did you make any further surveys of Colombian yams from the Mette Skou?

A July 15 at Stone and Mac Dougal Street in Brooklyn.

Q Were you there in company of any other --

A Mr. Howard Cray.

Q That was the same surveyor --

A Yes.

Q -- as was at the Bronx Terminal Market with you on the 9th?

A That's correct.

Q Would you describe what you found at that warehouse?

A Well, they were emitting an odor of decay and

they were sunken to half the contents of the box, wet and leaking. They were worthless. And Mr. Sousa stated that he had sold them and delivered 251.

Not sure whether that was all or not.

Q Was there any agreement as between the inspectors respecting the condition of those yams at that time?

A We agreed.

Q What did you agree to?

A And Mr. Cray wanted to know the market value of the yams at the time in good order and market value at the time. Mr. Sousa told him the market value was $17 a box had they been in good condition.

Q Did you and the surveyor for the Grancolombiana Line come to any agreement with respect to how the yams were damaged?

A Yes. Mr. Cray, that they were suffocated due to high temperatures and discharging with a rope net.

MR. GIALLORENZI: I object to the --

THE COURT: Strike out the answer.

Q When you were at the pier --

THE COURT: What you better do is to replace the question because the witness went on to impinge an admission on somebody that was objected to as hearsay and what you wanted to find out was the answer to your question,

which he apparently can give. Read it back.

(Record read)

A Yes, we did.

Q What was that agreement?

A We agreed that they were heated --

MR. GIALLORENZI: I object, your Honor, to this so-called agreement.

THE COURT: Strike out the answer.

What was your opinion?

THE WITNESS: My opinion is that they were handled with extremely poor judgment and they were overheated, suffocated and damaged by unloading with a rope, rope nets, rather than with pallets and pallet bars.

Q And this suffocation, where in your opinion did that occur?

A In the deep tank.

Q Now, at the time that you were at the pier on July 2 and inspected the yams in stow and subsequently when you inspected the yams on July 3, did you see any bugs?

A No.

Q How long, in your experience, have you known Colombian yams to be stored following their arrival in New York?

A Other than -- I am not familiar with this

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particular variety of yams being in commercial storage. I have seen them held in the merchants' stores for quite a while. They could be held several months.

Q In other words, you mean you haven't seen them in storage --

A Commercially stored, no.

Q But in the stores where they are sold to, they are held for several months at least?

A Yes, but not in commercial storage houses.

Q Have you had occasion to survey shipments of yams or other vegetables which were decayed due to heat which was manifested on arrival of the vessel?

A Yes.

Q Is there a relationship between the air temperatures surrounding a yam under ventilation and the temperature of the yam itself?

A Yes.

Q What is that relationship?

A Well, with good circulation, it would vary no more than maybe two degrees, but with poor stowage they vary according to the amount of air that is permitted in the compartment and the extent of the circulation and the amount of cargo in the compartment.

Q Now, when yams are heated progressively to

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A I believe that they had commenced while we -- after -- they had commenced I would say. Because all I could get to at the time was the ones that were on top of the plywood.

Q And when you went aboard the vessel, did you speak to anyone on the ship?

A I don't recall who it was, who.

Q You don't recall speaking to anyone?

A I don't recall.

Q And who told you that the yams were stowed in the deep tanks?

A I don't remember who told me. You know, I deal with an awful lot of people for years that I don't know their names.

Q Well, who directed you to go to the deep tanks?

A I don't remember that.

Q And were you told that the yams were stowed in both the port and the starboard deep tanks of the Mette Skou?

A I only -- I was only in one tank.

Q Which tank was that? The port or starboard tank?

A I don't remember.

THE COURT: Did you take any notes?

THE WITNESS: I am unable to find my notes of that

date. I have gone from one thing to another so much, I have my notes for the other dates and unfortunately I am unable to find my notes for that date. I had some things to happen in my business --

THE COURT: How did you recall that on the first time that you inspected the yams you found that the temperatures of the yams were 70 degrees to 90 degrees? What reminded you of that if you didn't have your notes?

THE WITNESS: I have had some reminders of this shipment from the very beginning and I have a vivid memory of it.

THE COURT: I assume that on the first time around you made your usual careful inspection of the yams, didn't you?

THE WITNESS: I made an inspection of them in the compartment.

THE COURT: Well, you made the kind of an inspection that you would regard as a careful, expert examination of the yams?

THE WITNESS: So far as I could go at that particular time.

THE COURT: Well, was there anything that kept you back or held you down? You say so far as you go. I want to know what that means.

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doing. I don't look for, I am not an ambulance chaser. I don't look to see what trouble I can find that somebody else has got. I stick to the business that I am engaged to do and go about my business.

THE COURT: Well, as far as you were concerned on July 2, these yams were not in an overheated condition; isn't that the way it was on July 2?

THE WITNESS: They were in an overheated condition but not, you could smell decay. You could smell odor from the ones down below which I could not get to at the time.

THE COURT: Well, did you tell anybody to move anything so that you could get there if you wanted to?

THE WITNESS: You just have to wait until the cargo is moved.

THE COURT: But you didn't leave any instructions behind that you had made an inadequate examination, did you?

THE WITNESS: No. I don't, I never leave instructions behind with a steamship company that --

THE COURT: There is something that doesn't meet the eye here, Mr. McCabe. You keep on telling me the exculpatory things and at the same time you tell me you lost your ntoes after a very impressive statement of the degree

of care that you take in making an examination and the extent of the examination, and then all of a sudden we find out that your examination was hampered in some way although you didn't mention it as being hampered on prior occasion.

THE WITNESS: Your Honor, I understand. I haven't checked it. I had a court case to go to that particular morning.

THE COURT: Well, you mean that the inspection that you made on July 2 was hampered because you had a court case that day?

THE WITNESS: It was only hampered in that, by going back, the only way it was hampered, if I didn't have anything else to do, I may have stayed there longer and watched them discharge it.

THE COURT: How many days intervened between the time, or how many hours intervened between the time you were there the first time and Mr. Sousa called you up?

THE WITNESS: I don't remember. When I am in court like this, or when I am on another job, I go to the telephone -- I have an answering service and I go to the telephone and I call answering service and I call my secretary and it is not important to me as to what time they call. I don't keep a record of it, but I just, as soon as I can get to it, I go take care of it.

did you take any yams along with you?

A No, sir.

Q Samples?

A No, sir.

Q The yams that you said that you cut in the deep tanks, what did you do with those yams?

A I put them back in the box.

Q You put them back in the box?

A Yes.

Q Do you know how many yams were in the particular tank that you visited that morning?

A I do not. I assume they were all in there.

Q You assume they were all in there?

A Yes.

Q And that there were no other yams in the other deep tank?

A I didn't have knowledge of it.

Q Did anyone tell you to go into the other deep tank?

A No.

Q You have testified that these yams are plants and they require oxygen to breathe.

A Yes, sir.

Q You also testified that when you opened up the

cartons you noticed that the yams were in paper.

A Yes, sir.

Q Do you know the type of paper that they were wrapped in?

A I know the type of paper. I don't know the name of it. It is the customary paper that I find yams wrapped with.

Q Is it a heavy paper?

A Not excessively heavy, no.

Q What would you say that it is similar to?

A About like newspaper.

Q Like newspaper?

A Yes.

Q Like The New York Times without the printing?

A Yes.

Q And when a yam is wrapped in that paper, does it impede the breathing of the yam?

A Well, they are not wrapped tight. They have quite a fold and a loose fold and this, this, the fold of the wrap and so forth prevents them from bruising and it prevents them from being placed quite as close together as they might be as if they dovetailed one another without the wrapping.

It is a customary way, practice of shipping them.

Q Well, if you don't wrap them with a certain amount of tightness, the wrappings are apt to come off, isn't that right?

A No, sir.

Q They would not come off if they were loosely wrapped?

A No, sir. The weight of the yams and the fold and the length of the --

Q Did you ever see any yams where the wrappings had come off?

A Yes, when your boxes get broken or dumped.

Q But I am talking about boxes that have not been broken or dumped.

A No, sir.

Q You are sure about that?

A I am sure of that.

Q Well, do you think a yam would have a better chance of breathing if it had no wrapping around it?

A It would, could have more chance of breathing, but the wrapping offsets the difference. It is a common practice to wrap produce, fruits and vegetables and root crops of this size. All your plums and peaches and practically all of them, pears, nectarines and apples, they are wrapped.

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Q You are talking about small fruits. I am talking about yams.

Is there any other way you could ship them without wrapping them and without endangering damage by chafing?

A I think they are being shipped, the wrapping is good and proper practice.

Q But could you put the yams in excelsior, for example, in a carton?

A Could be done.

Q And they could breathe through the excelsior because you don't have the tight packing, isn't that so?

A Well, this breathing through the paper.

Q They breathe through the paper, but they would have a better chance of breathing through excelsior, isn't that right?

A Possible.

Q When did you return to the Mette Skou?

A I believe it was July 3

Q At what time?

A I don't remember.

Q Did you go aboard the vessel?

A As I recall, I did.

Q And did you go into the deep tank?

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the notes.

THE COURT: Well, when do you write up the report? A month afterwards or --

THE WITNESS: Sometimes.

THE COURT: What is that?

THE WITNESS: Sometimes.

THE COURT: You mean you just carry this in your mind and the customer is indifferent about when he gets the report?

THE WITNESS: No, sir. From the notes --

THE COURT: There is something here that troubles me about this method of inspection and --

THE WITNESS. I lost my wife who had been with me for thirty-two years. I lost my --

THE COURT: Have you got any other questions?

MR. GIALLORENZI: No, I don't have any others.

THE COURT: Do you have any questions?

MR. HOOPER: I have a few, your Honor.

CROSS-EXAMINATION

BY MR. HOOPER:

Q Did you issue a report for the Santa Cruz after you surveyed that shipment?

A I would have to ask my secretary.

Q I show you Ove Skou Exhibit I. Is that your

report?

A Yes, sir.

Q That is the kind of report you usually issue when you conduct an inspection of cargo on a ship?

A That's right.

THE COURT: What is the date of that report?

THE WITNESS: June 12, 1974.

THE COURT: What was the date of the inspection?

THE WITNESS: Well, the date on the report would be the date of the inspection. The inspection would be written out in longhand and my secretary would type a copy of it.

Q Mr. McCabe, you said you looked and you saw some plywood in the deep tank?

A Yes, sir.

Q Which blocked an air channel?

A Yes, sir.

Q Can you tell me whether that air channel was between the cargo and the skin of the ship, or between the rows of cargo, or just where was it?

A Between rows of cargo.

Q It was not between the cargo and the skin of the ship?

A I think it was, too.

Q It was also between the cargo and the skin of the ship?

A Whatever channels that were provided, you could see that there were channels down below that, separations of the blocks of stow and the plywood covered except where you could see between it.

Q Do you remember how close the stow of yams was to the skin of the ship?

A I don't.

Q Do you remember whether any structural members of the ship were between the skin of the ship and the stow of yams?

A I don't remember them, but I understand they were. Platforms, I don't remember them.

Q Is it your testimony that there was no ventilation in that deep tank other than the two holes which you testified about?

A None that I could ascertain at the time.

Q So you just --

A I understand that there is supposed to have been ventilation. If it was, it was insufficient and it would appear like a column along the wall.

THE COURT: How do you know it was insufficient? Did you test it?

THE WITNESS: I understand that it --

THE COURT: No, no. Did you test it?

THE WITNESS: The temperatures speak for themselves.

Q When you were in the deep tank, I believe you stated that the longshoremen were discharging the yams.

Now, were they placing the yams onto the wing or onto the deck of the 'tween and then hoisting them out of the hatch, or were they hoisting them directly from the deep tank out?

A I don't recall that. I believe they placed them directly on the nets at least.

Q In the deep tanks?

A Yes.

Q Or in the deep tank.

Are you an expert in fusarium dry rot?

A I have been working with fusarium rots in tubers since 1930, shipments.

Q And you saw fusarium dry rot on these yams?

A I don't remember how much.

Q But do you remember whether you saw any?

A There was some in it.

Q What if any significance did you attach to the presence of fusarium dry rot?

A The fusarium dry rot,among its traits is, and it is considered along the same as a defect of the tuber, like a cut or a crack or misshapen. It goes in the same category. It doesn't go in the category of a soft decay.

Q What does it need to grow?

A Warmth and moisture.

Q **Warmth** and moisture?

A Yes.

Q Does it require oxygen?

A I don't know.

Q Did you see any sprouting?

A Yes, but I don't know how much.

Q Do you know what sprouting requires to grow?

A Yes, sir.

Q What does it require?

A Warmth and moisture.

Q Oxygen?

A To some extent.

Q Now, you stated that, or you gave your opinion that the damage you noted to the yams later was caused by overheating.

Now, are you saying that the heat alone caused this damage or was it a lack of ventilation or did lack of ventilation cause the heat?

A Well, the lack of ventilation causes the heat and the bruising of the tubers and discharge causes them, the combination of all of them, causes decay. Any one of those things damages the product.

Q If somehow there was lack of ventilation but no heat, would these yams have been damaged?

A Yes.

Q And if there was plenty of ventilation but heat, would they have been damaged?

A Not so much.

Q You mentioned a customary method of packing yams. You said it was a telescoping box?

A Yes.

Q Does that have many holes in it?

A It has hand holes and it has seams top and bottom. Sometimes they have perforated holes, three or four on a side. Sometimes we have had cases where we couldn't see the difference in the tubers in one box from the other, one with and one without.

Q When you opened up these boxes, did you take off a lid or open up the flaps?

A Take a lid off.

Q There was a separate lid that came completely off the box?

* * *

jbas McCabe - redirect 300

the contents other than through the slinging of them and the way they did it.

I am going to have to strike out the answers to the questions that you put on the ground that they were in response to matters not in evidence.

MR. McCONNELL: Your Honor, are the reports not admissible on the basis that they have been produced pursuant to notice and they constitute --

THE COURT: No. That does not qualify them. There may be a basis for introducing them, but that is not the basis. Just because I ask you to produce your bank book, that doesn't mean that that becomes available as evidence. Evidence is only introduced on the basis of its qualification.

Do you have any other questions of this witness?

Q What was the cause of damage to this cargo that you surveyed, both on the pier, in the vessel, at the Stone Avenue warehouse and at West Indies and at the American Banana Warehouse or premises?

A Almost complete disregard for the nature and requirements of the product, overheating, lack of ventilation and rough and improper handling.

MR. McCONNELL: Thank you.

THE COURT: Do you have any other witnesses?

MR. McCONNELL: We have one, your Honor.

(Witness excused)

A R L I N G T O N R O Y E R, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCONNELL:

Q Mr. Royer, by whom are you employed?

A Bar-Zel Expediters.

Q I would like to show you Defendant Flota's Exhibit A, which is in evidence here, and ask you if you can identify or state what this paper is that I am showing you here, the second paper under the check.

A This is our invoice to our client for all charges incurred on a shipment that we handle for them.

Q Does the paper state the name of the shipment?

A The name of the shipment, the name of the carrier, in other words?

Q Yes.

A Yes, the Mette Skou.

Q I show you a check attached also to this exhibit and I would like to ask you if you have brought your records of this shipment with you today.

A I did.

Q Does the exhibit of the plaintiff show a reference number for you?

A It does.

Q What is that reference number?

A 55159.

Q Now, Mr. Royer, did Vana Trading Company pay this invoice, which is Defendant Flota's Exhibit A, in the amount of $6,950.40?

A Yes.

Q And is there any duty indicated on that invoice?

A Yes. On the fourth line.

Q How much was that duty?

A $6,875.

Q Does your file indicate whether that duty was paid to the United States government?

A Yes. With proof.

Q What is that proof, sir?

A Proof is a copy of the broker's copy, which is the only proof we as brokers get back.

MR. McCONNELL: Would you mark this, please.

(Plaintiff's Exhibit 10 marked for identification.)

MR. McCONNELL: I offer this perforated copy as

Plaintiff's Exhibit 10.

MR. GIALLORENZI: No objection.

MR. MULROY: No objection.

MR. HOOPER: No objection.

(Plaintiff's Exhibit 10 for identification received in evidence.)

Q Mr. Royer, does the Bar-Zel file that you have show that any duty refund was applied for or obtained?

A None.

MR. McCONNELL: That is all.

CROSS-EXAMINATION

BY MR. GIALLORENZI:

Q Mr. Royer, before cargo can be removed from a pier, does it need to be cleared with the U.S. Customs authorities?

A Always.

Q Do you know on what date this particular shipment of yams was cleared with the U.S. Customs authorities?

A I would say on or about July 21, 1974, to the best of my knowledge.

Q Do you have any record in your files showing when the duty was paid and the cargo was cleared?

A I have a record of when the duty was paid, but not of when it was picked up.

Q When was the duty paid?

A The Judge has it.

7/26/74.

Q July 26, '74?

A That is when the duty was paid.

Q And how can you obtain a clearance from Customs to permit the cargo to come into the United States without payment of duty?

A Well, there is a system known as the "immediate delivery" whereby the merchandise is examined by the inspector on condition that ten days after the release of the merchandise the duty will be paid to Customs.

Q Has Bar-Zel ever made application to the Customs authorities to have a refund of this duty?

A No.

Q Do you usually make application for a refund of duty where cargo is subsequently dumped because it cannot be sold to the consumers?

A Depending on the conditions.

Q Did you receive any instructions to do it in this particular case?

A No.

Q Have you done it in the past in connection with other shipments that were dumped because they did not meet

our standards for human consumption?

A Not when I worked for Bar-Zel, but at another broker.

Q Other brokers may have done it?

A Yes.

Q But Bar-Zel does not do that?

A Well, not to the best of my knowledge.

Q Not to your knowledge.

But you do know of other brokers who apply for refund where the cargo is dumped?

A Yes. Depending on the circumstances, if it is permissible by Customs that they get a refund.

Q Did you advise customs that that cargo had been destroyed or dumped?

MR. McCONNELL: Your Honor, I think that question might be objectionable on the basis that it is beyond the scope --

THE COURT: Did you know anything about whether this cargo had been dumped?

THE WITNESS: I do not know, no.

THE COURT: Did your firm get any information from Vana Trading that the cargo was in bad shape and had been dumped, destroyed?

THE WITNESS: As far as my records go, I have

* * *

AFTERNOON SESSION

1:45 p.m.

MR. McCONNELL: The plaintiff calls Captain George Axiotes to the stand.

G E O R G E N. A X I O T E S, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. McCONNELL:

Q Captain, would you state your profession?

A Sorry.

Q Would you state your profession?

A I am a marine surveyor.

Q For how long have you worked as a marine surveyor?

A Since 1950.

Q Prior to 1950, what was your occupation?

A I started going to sea in 1920. I came up through the various grades to master. I was master from 1942 until 1945. From 1945 through 1948 I was port captain for Weyerhouser Steamship Company.

The ensuing two years I was operating manager for New Texas Steamship Corporation, and stevedore superintendent

for Pittston & Lone Star Stevedoring.

Then in 1950 I entered the marine survey business and I am still in it.

Q Captain, what kinds of surveys have you had occasion to do during the last twenty-six years?

A Many of my surveys, in fact, until four years ago, I was engaged heavily in inspection of stowage and cargo discharge for various steamship companies and also in inspection of damaged cargo, among other types of survey work.

Q Did those surveys include vegetable, tuber and fruit cargos?

A They did.

THE COURT: Are you an independent surveyor?

THE WITNESS: Yes, your Honor; independent.

Q Were you present in the court this morning for the testimony of James McCabe respecting the stowage arrangements which he found aboard the Mette Skou?

A I was.

Q Have you examined the plans of the vessel, Mette Skou, which were produced pursuant to notice by the defendants?

A I did.

MR. McCONNELL: May I mark these as a plaintiff's

* * *

have to be guided by the answers given on the deposition for your further testimony because up to now your testimony is you don't see it and you don't know if it is there.

THE WITNESS: That's right.

MR. HOOPER: I would object to the questions from the deposition.

THE COURT: I don't know what they are going to be and you can't object in advance.

MR. HOOPER: The mate is in the courtroom and he is going to testify.

THE COURT: That is not an objection. If the mate is here, you can put him on on your part of the case.

Q Now, Captain, what factors would you look for in connection with the ventilation of a vegetable cargo?

A I would look for means of having a continuous circulation of air through that stow.

Q What would be the purpose of having the continuous air flow through the stow?

A Well, on the vegetable matter or fruit, it requires air coming in, fresh air, and in order to expel the gases and the moisture.

In other words, if something is confined, whether it is a person in a closet or whatever, that gas and moisture cannot dispel and it can create a heating

situation in it.

Q What other effects do the gases have than you have already mentioned, heating and so forth? Are there any other effects which the gases have on the cargo?

A Well, of course the heating situation can cause deterioration of the product.

Q Captain, the chief mate has testified with respect to these deep tanks which you see on the plans before you, that there is one sounding pipe which is capped on deck at all times; that there is a tank lid through which the cargo is loaded and that tank lid was closed throughout the voyage and dogged down.

He has testified that there is a manhole which goes into these tanks and the cover was closed during the voyage except for periods of inspection, when he would go down there. Further, he has testified that the intake trunk, which you have identified there, extends from the weather deck and takes atmospheric air down into the stow and exhausts it through the bottom of that trunk, which is approximately 1 by 2 feet, and he has further testified that that trunk is located on the center line of that compartment.

He has also testified that in one of the corners aft on the outboard side of the tank, the outtake of pipe

extends to the weather deck passageway with the opening to it facing inboard; and he has testified that there are no mechanical fans associated with the outtake.

Based upon those facts as stated by the mate, and based upon the testimony which you have heard concerning the stowage and dunnaging of this cargo, of the yams, can you form an opinion with respect to the ventilation and stowage and carriage of these yams?

A I can.

Q Would you please state that opinion for the court?

A The opinion is, first, you must realize that a deep tank is just that. It is a deep tank and usually extends from the level of the 'tween deck down to the tank top. Therefore, it is a deep tank and you have one ventilator, call it an intake, coming in your center line bulkhead. You have your vent pipe, your outgoing air, so to speak, on the after part of the tank, probably the other side. I am not too sure where that iss according to the plan.

You have a situation there, and from what I have heard in the testimony you have plywood --

THE COURT: From what you have read in the testimony.

* * *

notion that the thing was covered over from stem to stern.

THE WITNESS: Precisely.

Q Captain, what if the plywood just covered the aisles which were placed between the cargo.

A It would prevent the hot air from rising.

Q Now, with respect to the ventilation itself, would there be a circulation pattern set up within the stow which would be injurious to the carriage of a yam cargo?

A Well, based on the fact that air couldn't get out, it would stay there and would tend to cause the cargo to cook in its own juice, so to speak, because there could not be a circulation of air.

Q Are the vents, the intake and the outlet vent in the proper position for ventilating a vegetable cargo?

A Not in my judgment.

Q What would be proper?

A In my judgment proper would be forward and aft of a hatch opening so that you could have a circulation of air.

Q Within the space?

A Yes.

Q Captain, have you ever surveyed any vegetable cargos or tuber cargos in deep tanks?

A I have never surveyed any vegetable cargos in

deep tanks. I have never seen any carried in deep tanks.

Q Would the lack of mechanics or a fan in the outtake be deleterious to the condition of this cargo?

A It could have some effect insofar as the fan could, if it were there, tend to draw out the air a little more quickly.

Q Would that be in connection with the withdrawal of the gases generated by the cargo?

A It would create a better circulation.

MR. McCONNELL: That is all, your Honor.

CROSS-EXAMINATION

BY MR. GIALLORENZI:

Q Captain, do yams give off gas?

A I'm sorry.

Q I said, do yams throw off gas?

A Any vegetable throws, yes, the yams do.

Q And is that one of the reasons why a plant would ripen if the gas was not diffused properly?

A Sorry. I can't hear you.

Q I am sorry.

Is that one of the reasons why any plant would ripen, any fruit would ripen, because the gases are not diffused promptly?

A Yes.

Q Now, if you had a yam that was wrapped in a piece of paper like newsprint except without the printing, would that impede the gases from being diffused that were thrown off by the yam?

A Are you asking me for an opinion now?

Q Yes.

A I would have to give you an opinion and say yes, but I have not seen a yam with paper wrapped around it.

Q You have never seen a yam -- have you seen any yam shipments in your long career?

A Not yams. I have seen other types of tuber. I have not seen yams.

Q You have never seen a yam shipment?

A No.

Q But if a yam was wrapped in a piece of paper, a newsprint-type paper, any gas that it would give off would tend to remain inside the wrapper, isn't that correct?

A I don't necessarily agree to that. I would have to know how it was wrapped to begin with.

Q Suppose it was wrapped securely with a newsprint-type paper, securely wrapped so that the paper cover would not fall off and so that the yam would not be chafed and it would be sealed, so to speak -- wrapped securely.

Would that cause the retention of the gases to --

would that cause the gases to be retained in the newsprint wrapper?

A In other words, are you asking if it is totally wrapped?

Q That's right.

A So that absolutely no part of the yam shows?

Q That's correct.

A Then it is quite likely that it would impede the release of the gas.

THE COURT: What would the effect of that be on the yam?

THE WITNESS: It probably would cook it in its own juice, so to speak, your Honor. That is the only way I can describe it.

THE COURT: Why would it cook it in its own juice?

THE WITNESS: Because this gas would not escape. I don't know whether it would penetrate through a newspaper or not.

THE COURT: Have you had occasion to see cargos of yams?

THE WITNESS: No, sir, I have not.

THE COURT: Have you had occasion to see cargos of other vegetables?

* * *

cargo surveys, until I got a heart attack four years ago, and then I can no longer climb up and down the ladders, but for twenty-two years all of my work was on the part of, on behalf of the ship.

THE COURT: And in all that period of time you had occasion from time to time as an expert to examine vegetables that had been shipped in one or another way?

THE WITNESS: Vegetables, fruit, meat, and so on, your Honor.

THE COURT: You didn't find in all of that experience in the various ships that you considered that vegetables were wrapped?

THE WITNESS: Not vegetables, no, your Honor.

BY MR. GIALLORENZI:

Q Isn't the reason why the vegetables like yams were not wrapped is because you wanted to diffuse the gas which would cause the yams to cook in its own juice?

A You say that I wanted to.

THE COURT: I think we covered that. You are just repeating the testimony and the is no use in that or help in that.

MR. GIALLORENZI: I am sorry. I have no further questions. Thank you, Captain.

* * *

A I still can't -- this here looks as this it is on the after part of the bulkhead, on the one bulkhead, but frankly, this doesn't coincide with this at all.

Q Now, Captain, you went to sea some time ago.

When you sailed, did the ships have the power ventilation or did they have the natural air ventilation?

A No. The vessels I sailed on, well, with the exception of refrigerated ships, of course, but the dry cargo and tankers as a matter of fact had natural ventilation.

Q And in natural ventilation, you would want one ventilator in the forward end, probably the outtake ventilator in the forward end of the tank, and the intake on the after end; is that correct?

A I would prefer four ventilators, one at each corner.

Q Because they weren't assisted by any mechanical means?

A Yes.

MR. HOOPER: I have no further questions, your Honor.

MR. MULROY: No questions, your Honor.

THE COURT: Thank you.

MR. McCONNELL: May I have a couple on redirect?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. McCONNELL:

Q Captain, have you seen fruits and vegetables of any kind wrapped in paper before in stow?

A I have seen oranges, for instance, and I recall apples wrapped in what I guess you call a tissue paper.

Q And how about eggplant, tomatoes?

A Possibly tomatoes, not eggplants.

Q Have you seen vegetables wrapped in cellophane bags, banans, for example, in bunches?

A You mean in stow?

Q Yes.

A No. When I carried bananas, they were in bunches, but I have not seen any recently.

Q Did the wrappings which you have seen with respect to these vegetable and fruit cargos --

A Sorry. I didn't hear you.

Q Did the wrappings which you have seen with respect to fruit and vegetable cargos cause their deterioration?

A Well, the wrappings that I have seen respecting the oranges and the apples, they were a light paper and they were not, they didn't fully enclose as though it was sealed within it. So there was some means --

Q The previous testimony has been that the yams were loosely wrapped.

A Loosely wrapped, yes.

Q Would that tend to impede the circulation of the air or not?

A Loosely wrapped it would certainly give the gas an opportunity to escape.

Q And again, if the plywood is placed across the aisles, but whether or not it would reach to the absolute edges of the tanks, would that still impede or would it not impede the circulation of the air in the tank?

A It would impede it.

Q Captain, where aboard a ship is it appropriate to stow vegetable cargoes, tuber cargos?

A Any vegetable cargo that I have experience with, either carrying it or observing it in stow, was always carried in the upper 'tween deck. In the case of a single 'tween deck ship, in the 'tween deck.

Q What was the purpose for carrying them there?

A So that they would get better and more ventilation, more circulation of air.

MR. McCONNELL: That is all, your Honor.

THE COURT: Thank you. You may step down.

(Witness excused)

* * *

DIRECT EXAMINATION

BY MR. GIALLORENZI:

Q Mr. Kristiansson, by whom are you employed?

A Grancolombiana New York, Incorporated.

Q In what capacity?

A Executive vice president.

Q What are your duties as executive vice president?

A I am the chief executive officer of Grancolombiana New York, Incorporated.

Q What is the relationship between Grancolomaiana New York, Incorporated, and Flota Mercante Grancolombiana, S.A.?

A We are general agents.

Q I show you this time charter dated April 26, 1974, and ask you if you are familiar with the same for the vessel Mette Skou.

A Yes, I am.

MR. GIALLORENZI: I would like to have this marked for identification.

(Defendant Flota Exhibit L marked for identification.)

Q Was the vessel Mette Skou delivered by the owner Ove Skou to Flota Mercante Grancolombiana under this time charter?

A Yes.

Q Did the Mette Skou perform voyages for Flota Mercante Grancolombiana pursuant thereto?

A Yes.

Q Including a voyage which ended in New York on July 1, 1974?

A That is correct.

MR. GIALLORENZI: I offer this in evidence.

MR. HOOPER: No objection.

MR. MULROY: No objection.

MR. McCONNELL: No objection.

(Defendant Flota Exhibit L for identification received in evidence.)

Q Does Flota Mercante Grancolombiana maintain a terminal in New York City?

A Yes.

Q Where is this terminal maintained?

A It is pier 3, Brooklyn Port Authority, Furman Street, in Brooklyn.

Q Is there where the vessels are usually docked and loaded and unloaded for Grancolombiana's account?

A Yes.

Q On July 1, 1974, can you tell us what the condition of that facility was?

A It was filled up.

Q With vessels or cargo?

A Cargo and vessels.

Q Was the Mette Skou scheduled to arrive on or about July 1, 1974?

A That's correct.

Q Could it have been accommodated at pier 3?

A No.

Q What arrangements did you make for the purpose of arranging for a dock for the Mette Skou?

A First we contacted our own stevedores, and then we were contacted by ITO, who offered a facility to discharge the ship.

Q Where was the facility that was offered by ITO to discharge the vessel?

A The army base in Brooklyn.

Q And did the Mette Skou subsequently go to the army base for the purpcse of unloading?

A She did.

Q Did you enter into an agreement with ITO with reference to unloading the vessel?

A Yes.

Q And what was the agreement? Who did you make the agreement with?

A You are referring to the person?

Q Yes.

A I made it with Mr. Francis X. McQuade and Mr. David E. Bennett.

Q What capacities, what jobs do those two gentlemen occupy or hold?

A At that time Mr. McQuade was the president of International Terminal, ITO, as it is called, and Mr. Bennett was their solicitor.

Q Now, did you speak to either Mr. Bennett or Mr. McQuade about the requirements of the number of gangs that the Mette Skou would need?

A Both.

Q What did you tell them?

A We were told by them they had six gangs attached to that particular pier and we needed all six.

Q Did you make it known to them that you would need all six gangs to unload the vessel?

A Certainly did.

Q And they told you they has sufficient manpower to do so?

A That's right.

MR. GIALLORENZI: No further questions.

MR. McCONNELL: Your Honor, would you prefer

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clean copies here.

THE COURT: The clerk will substitute the marking on the clean copies and you may hold them in your possession.

Any further questions?

CROSS-EXAMINATION

BY MR. HOOPER:

Q Mr. Kristiansson, you testified that you decided where to discharge the Mette Skou, isn't that correct, meaning Grancolombiana decided where it would berth in New York City?

A Yes.

Q Did Grancolombiana also decide what ports the Mette Skou would call at?

A Yes.

Q Did Grancolombiana also book the cargo for the Mette Skou?

A Yes.

If you are referring to Grancolombiana, it is either -- I assume you refer to Grancolombiana Flota Mercante --

Q Yes, Flota Mercante, Grancolombiana, the parent corporation.

A The cargo was booked through them probably by

an agent or by a cargo broker in Colombia.

Q Did Flota have the authority to appoint a super of cargo to supervise the operations of the cargo if it so desired?

A Aboard the ship?

Q Yes.

A I believe the charter party calls for that.

I would like to consult it before I say definitely yes or no.

Q Did Grancolombiana furnish the ship with all its sailing directions?

A Yes.

Q Did Grancolombiana issue the bills of lading for the cargo carried on the Mette Skou?

A Yes.

MR. HOOPER: I have no further questions, your Honor.

THE COURT: Do you know anything personally about this cargo? Did you go to see it at the time that it landed?

THE WITNESS: No, your Honor, I did not.

CROSS-EXAMINATION

BY MR. MULROY:

Q Did you discuss the labor with Mr. Bennett?

A No, I did not.

Q What did you discuss with Mr. Bennett?

A With Mr. Bennett and Mr. McQuade, we discussed the berthing of the ship and ITO offered their services at army base to handle this particular ship.

Q Was this over the telephone or in person?

A It was both in telephone and in person.

Q On what date were these discussions held?

A I can't say the exact date, but I can give you an approximate date.

Q Approximately.

A About a week before the ship arrived, which would make it about the latter part of June.

Q And who told you at this discussion that they had six gangs working at the army base?

A Both Mr. McQuade and Mr. Bennett.

Q Now, do you know the practice in New York for the stevedores to obtain labor from the hiring hall?

A Yes, I am familiar with it.

Q And are you also familiar with the fact that it is not unusual to get less than the number of gangs that you order in the port of New York?

A Occasionally it might happen.

MR. MULROY: I have no further questions.

THE COURT: Thank you.

MR. GIALLORENZI: Just one question.

REDIRECT EXAMINATION

BY MR. GIALLORENZI:

Q Would you have sent the Mette Skou to the army base if you had not been assured that six gangs would have been supplied to the vessel?

A It was the basic reason why we sent it to the army base, because of the availability of labor.

MR. GIALLORENZI: That is all. Thank you.

(Witness excused)

E D W A R D F. M c G A N N, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIALLORENZI:

Q Mr. McGann, by whom are you now employed?

A Grancolombiana New York, Inc.

Q In what capacity are you employed by Grancolombiana New York, Inc.?

A Presently as director of operations.

Q Where is your office located?

A At the terminal, pier 3, in Brooklyn.

Q What are your duties as director of operations?

A In order to set up the sailing and supervise the movements of the vessels.

Q On June 28, 1974, by whom were you employed?

A Grancolombiana.

Q In what capacity?

A Assistant terminal superintendent.

Q What were your duties then?

A At that time it was to work with men in coordination between the stevedore and the vessels.

Q Were you advised by Mr. Kristiansson that the Mette Skou was due to arrive in New York on or about July 1, 1974?

A Yes, I was.

Q And do you know what arrangements were made with reference to docking the Mette Skou?

A Well, he had asked me to set up the actual docking with tugboats. He said he had agreed with ITO to place the vessel at their berth.

Q Where would that berth be?

A That was over at the army base in Brooklyn.

Q That is not the regular berth of Grancolombiana?

A No, it is not.

Q Did Mr. Kristiansson discuss with you the number of gangs which would be necessary to unload the vessel Mette

Skou?

A Yes, because we needed six gangs and he said they said they would give them to us.

Q And when the Mette Skou arrived on July 1, 1974, were you advised as to the number of gangs which reported to work on that morning?

A Yes, I was.

Q By whom?

A By one of my assistants that was over at the terminal, Mr. Sebazco.

Q What time did Mr. Sebazco call you?

A Approximately 8:30, eight -- somewhere around 8:30 in the morning.

Q What did he say to you?

A He informed me that there was only three gangs on the vessel discharging or working on the ship.

Q Did you give him any instructions with reference to what cargo was to be unloaded?

A No.

Q Now, after he advised you of that fact, that there were three gangs working on July 1, what did you do?

A I called the stevedore because at that time, you know, to ask why there wasn't six as we had requested.

Q Who did you speak to at the stevedore? That

would be ITO.

A I don't recall his name. It would be ITO.

Q Do you recall what they told you?

A At that time he said unfortunately that is all the labor they could obtain that particular day, as far as I remember.

Q He told you that was the labor that they could obtain for that particular day?

A Yes.

Q Do you know whether there were any other ships docked at the army base that day?

A No, I do not.

Q Did you order labor for the following day?

A Yes.

Q July 2?

A Yes.

Q How many gangs did you order?

A Six gangs.

Q And did they supply you with six gangs?

A Yes, they did.

Q Did they work overtime on July 2?

A Yes, we did work that night, part of the gangs, not all of the gangs.

Q Now, for the following day, July 3, did you order

labor?

A Yes, we did.

Q Was the vessel completed on that day?

A Yes, we finished that night.

Q Now, if a consignee wishes to go to a pier to obtain his cargo, with whom doee he make the appointment?

A Normally at our terminal, the delivery clerk, the stevedore.

Q The stevedore contracted at your terminal, pier 3.

Were any arrangements made with Mr. Sousa with Grancolombiana New York as to when they would send their trucks to pick up the cargo from the Mette Skou?

A I do not know.

Q Would that ordinarily be made with Grancolombiana or with ITO?

A No. It would be made with the delivery clerk.

Q By who is the delivery clerk employed?

A With the stevedore. With ITO, in this particular instance.

Q Is it a custom to have a team load a truck or trailer for any consignee in the port of New York?

A At any terminal?

Q Well, let us take the army base.

A Again, I am not familiar there. I know at our terminal we normally have extra labor available, yes.

Q What does that team consist of?

A A checker, a driver and a helper.

Q And by whom is the checker paid?

A The stevedore.

Q And the driver?

A Stevedore.

Q What does the driver drive?

A A hi-lo machine, fork lift machine.

Q And what is that used for?

A It is used to bring the cargo to the tailgate of the truck.

Q And the loader, by whom is he employed?

A He is employed -- eventually he would be paid, I venture, by the truckman. The truckman gets billed for that service that he requested.

Q And the truckman is sent or is employed by the consignee, is that right, ordinarily?

A Yes.

Q Does Grancolombiana get any part of the fee which is paid for the use of a loader?

A No.

Q By whom is the loader employed?

A Well, the loader would be employed by the stevedore. He would be there on an extra labor basis as part of the terminal.

Q If his services are required in loading a truck, his, the charges which are made by the stevedoring company to the consignee would not go into the pocket of Grancolombiana?

A No, not to my knowledge.

Q It would be paid to the stevedore?

A Yes.

MR. GIALLORENZI: I have no further questions.

CROSS-EXAMINATION

BY MR. McCONNELL:

Q Mr. McGann, did you have any knowledge of the cargo that was carried on the Mette Skou?

A General knowledge, yes, sir.

Q If there had not been another ship, other ships, at pier 3, would the Mette Skou have docked at pier 3, Brooklyn Port Authority, the normal pier where you work?

A Normally we try to bring them all in, every vessel in, yes.

Q To whom did you issue instructions respecting which cargos to be discharged from the Mette Skou?

A I did not.

Q Do you normally issue instructions as to what cargos to unload?

A No. That is normally the stevedore.

Q Thd stevedore determines who unloads the cargo, is that correct?

A Well, the stevedores themselves work it out in conjunction with the terminal people from the company.

Q Would that be --

A In other words, we contract the stevedore to handl the vessel as far as the discharge and the delivery of any cargo.

Q Do you have any instructions that you gave to the stevedores with respect to the discharge of cargos in terms of their preference?

A No. We contract for the stevedore to do the work.

Q It was the stevedore's decision insofar as you know as to what cargos to be discharged from the Mette Skou with the three gangs they had available on July 1?

A That's correct.

Q I'm sorry. July 2. Excuse me.

A That is all right.

MR. McCONNELL: Your Honor, I am confused.

Q July 1, I think you said, there were three gangs.

A Right.

Q And you gave no instructions as to which cargo was to be unloaded, I believe you said?

A No.

Q So that what was unloaded on July 1 with the three gangs that were available was decided by ITO?

A Yes, as far as I know.

Q How many gangs were available on July 2?

A We ordered six and we got six.

Q On July 3?

A The same amount.

Q Are you aware of the number of loading teams that were available?

A No.

Q On July 1, 2 or 3?

A No, sir.

Q Is the consignee allowed to go to a pier anywhere in the port of New York and drive the hi-lo's and take delivery of the cargo without the assistance of the terminal operator, checker and driver?

A No, not to my knowledge.

MR. McCONNELL: That is all I have.

MR. HOOPER: I have no questions, your Honor.

CROSS-EXAMINATION

BY MR. MULROY:

Q For the amount of cargo that was coming off this ship, would it be normally expected that it would be a three-day job?

A Yes.

MR. MULROY: No further questions.

REDIRECT EXAMINATION

BY MR. GIALLORENZI:

Q Does Grancolombiana have any control over the disposition of the loading teams, as to which ship --

A No.

Q None?

A No.

MR. GIALLORENZI: Thank you.

(Witness excused)

THE COURT: We will take a short recess now.

(Recess)

R E X S E B A Z C O, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIALLORENZI:

Q Mr. Sebazco, by whom are you presently employed?

A By Grancolombiana.

Q Is that Grancolombiana New York, Inc.?

A New York, Inc.

Q In what capacity are you employed by them?

A I am manager of the containers division.

Q In July of 1974, by whom were you employed?

A By Grancolombiana New York, Inc.

Q In what capacity?

A The same capacity, containers.

Q Now, was it your job to go aboard ships that were either owned vessels or chartered vessels that came into New York on behalf of Grancolombiana?

A That is part of my duties.

Q Were you asked to go aboard the SS Mette Skou on July 1, 1974?

A Yes.

Q Who told you to go there?

A Mr. McGann.

Q That is the gentleman that just testified?

A Right.

Q Did you go aboard the Mette Skou on July 1, 1974?

A Yes.

Q At what time did you arrive on the vessel?

A 7 o'clock in the morning.

Q What was the purpose of going aboard the ship?

A Just to work with the Customs inspectors on the documents and other small things.

Q Did you speak to any of the ship's personnel?

A Yes. They were there when I came in. They greeted me.

Q Who did you speak to?

A Well, the captain, first mate and radio operator, I guess.

Q Did you know the type of cargo that was on board the Mette Skou?

A No.

Q Do you know Captain Hazelton?

A Sure.

Q By whom was he employed?

A Grancolombiana New York, Inc.

Q In what capacity?

A He is the terminal manager.

Q Was he in New York on July 1, 1974?

A No, he was not. He was on vacation.

Q Do you know where he was on vacation?

A I think he was in Europe.

Q When you went aboard the vessel at about 7 a.m. on July 1, 1974, were you requested by the chief mate or the master to see that the yams were discharged before any

other cargo?

A No, sir.

Q Prior to going aboard the vessel on July 1, 1974, had you been advised as to the number of gangs which would be furnished by ITO to unload the vessel?

A I was told there would be six gangs.

Q Who told you that?

A Mr. McGann.

Q When you were aboard the vessel in the morning of July 1, did you learn the number of gangs that were aboard the ship?

A Yes. As I was coming off the ship I noticed there was only three gangs working.

Q What time was that?

A Approximately 8:30 in the morning.

Q What did you do then?

A I called Mr. McGann over the telephone and mentioned it to him, that we only had three gangs working.

Q Did you say anything else?

A No. That was it. Then he says all right, I will get in touch with somebody, and I don't know what he did.

Q Did you return to the vessel on July 1, the Mette Skou?

A No, I don't think so.

Q When did you next return to the vessel, the Mette Skou?

A I believe it was the following day.

Q Did you speak with anyone regarding the unloading of the yams?

A Not at all.

Q Did you notice how many gangs were working on that day?

A Not -- I am not sure but I think we did have six. I am not sure.

Q Did you make a record of the number of gangs that were employed on the Mette Skou?

A Yes.

Q Is it your practice to keep a record of when a vessel commences to work and when it stops working and the number of gangs on board?

A Yes, sir.

Q I show you this diary, a yearbook for 1974, and ask you if that is the diary which you keep.

A That's correct.

Q And are those entries made by you?

A Yes, sir.

Q Are they made daily?

* * *

A There was one truck.

Q And the balance were lifted from the pier --

A On July 11.

MR. GIALLORENZI: No further questions of the witness.

CROSS-EXAMINATION

BY MR. McCONNELL:

Q Mr. Sebazco, does Flota or Grancolombiana issue dock receipts showing the delivery of the cargo so that the consignee may have a piece of paper if it so desired?

A No. That would be the bill of lading, but I don't know anything about it. Not a dock receipt. It would be a bill of lading.

Q Any other document available at all, other than this discharge book, that shows the number of cartons of the cargo that is delivered?

A Except for the -- no.

Q Do you have any knowledge as to who wrote the figures in red ink at the bottom, 18?

A No.

Q Or when that was written?

A No.

Q Mr. Sebazco, how many cartons does this record show were delivered to the consignee? On Defendant's

Exhibit N.

A Well, it shows a total of 4,982 cartons.

Q Is it customary at New York to discharge fresh produce prior to other cargo?

A In conjunction with another cargo?

THE COURT: In advance of another cargo.

THE WITNESS: In advance?

A Not necessarily.

MR. McCONNELL: That is all.

MR. HOOPER: Just a few, your Honor.

CROSS-EXAMINATION

BY MR. HOOPER:

Q Was a stevedore superintendent on board the Mette Skou on July 1, 1974, when you first went aboard?

A Again, I really don't remember.

MR. HOOPER: I have no further questions.

CROSS-EXAMINATION

BY MR. MULROY:

Q Would you say that the prime consideration as to the order of discharge of cargo would be the cargo that is most accessible?

A Well, I really don't get much into that. Really, I couldn't give you a right answer on that.

Q Well, you go on a number of ships for

* * *

Q Would you read that entry to the Court, please.

A 27 cartons crushed and contents intact, something like that.

Q Now, do you see any other entry on that page with regard to the condition of the cartons at the time they were removed from the pier?

A Well, there is another one, 21 cartons recoopered.

That is it.

Q Now, let me ask you this question which you may or may not know the answer to.

Are these delivery books the prime records that are used by steamship companies for the determination of claims that they will pay as distinguished from claim that they won't?

A I couldn't answer that. I wouldn't know.

MR. MULROY: No further questions.

THE COURT: Anything else?

Thank you very much. You may step down.

(Witness excused)

THE COURT: Anything else, Mr. Giallorenzi?

MR. GIALLORENZI: Yes, your Honor.

Mr. Mulroy and I have stipulated, your Honor, as to certain information or data with regard to the trucks

which were sent to the army base to take the cargo from the pier shed to the plant of the plaintiff or their warehouse, and I will refer to the stipulation as follows:

The following trucks arrived at the pier on this date:

July 3, 1974, pass number issued to the truck was 5. The truck was an Interport truck and it arrived at 9:49 a.m. and left the pier at 4:49 p.m. with 950 cartons of yams.

On July 3, 1974, pass number 9 was issued to a truck, port terminal, which arrived at 11:42 a.m. and departed at 4:44 p.m. with 823 cartons.

On July 3, 1974, pass number 10 was issued to a truck owned by Interport, which arrived at 12:48 p.m. and departed at 4:20 p.m., no service.

On July 3, 1974, pass number 11 was issued to a truck, Raffael, which arrived at 12:15 p.m. and departed at 4:57 p.m. with 624 cartons.

MR. MULROY: I would like to correct that. I believe Mr. Giallorenzi said 12:15 p.m. I think it is 12:51.

MR. GIALLORENZI: Yes. I stand corrected. I'm sorry, your Honor.

On July 5, 1974, pass number 9 was issued to a

truck owned by Interport, which arrived at 10:48 a.m. and departed at 11:17 a.m., no service.

On July 8, 1974, pass number 2 was issued to a truck of Interport, which arrived at 7:58 a.m. and departed at 11:30 a.m. with 684 cartons.

On July 9, 1974, no trucks reported for loading.

On July 10, 1974, pass number 12 was issued to truckman Raffael, whose truck arrived at 2:03 p.m., left at 4:25 p.m. with 350 cartons.

On July 11, 1974, pass number 8 was issued to truckman Raffael, whose truck arrived at 9:11 a.m., departed at 2:43 p.m. with 450 cartons.

On July 11, 1974, pass number 16 was issued to truckman Interport, whose truck arrived at 12:59 p.m., departed at 5:36 p.m. with 850 cartons.

On July 11, 1974, pass number 25 was issued to truckman British West Indies, which truck arrived at 2:05 p.m. and left the pier at 5:35 p.m. with 251 cartons.

Mr. Mulroy, will you further stipulate that those trucks and the dates and the amounts are the same as shown in Exhibit number N of Flota?

MR. MULROY: So stipulated, your Honor.

MR. GIALLORENZI: Thank you.

MR. McCONNELL: Your Honor, insofar as that

* * *

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VANA TRADING CO., INC.

- against - 75 Civ. 1278

SS METTE SKOU, etc.

New York, New York
May 20, 1976 - 10:05 a.m.

(Trial resumed)

THE COURT: I have read the chief mate's testimony so that you can rely on the fact that I know what is in there.

P A U L A K S E L L A R S E N, called as a witness on behalf of the defendant Ove Skou, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOOPER:

THE WITNESS: Your Honor, as you know, I am a Dane, so forgive me if I make any errors in the English grammar.

THE COURT: The only person that makes errors in this court is the judge.

MR. MULROY: Your Honor, if I might interrupt for one minute before we go any further, in view of the fact that the Court has read the deposition of this witness

and there is a statement that this witness made, there is an error in the identification of individuals in the names, and the parties involved in this particular error would like to correct, in the deposition, your Honor, a reference to the name Donahue --

THE COURT: What page?

MR. MULROY: I don't know the page. I saw it in the statement. He referred to an ITO representative by the name of Donahue and that is actually Flynn, your Honor. There is no Donahue involved.

Mr. McGann testified yesterday to an Irish name and this gentleman said Donahue, and also there was a reference to Captain Hazelton being present on behalf of Grancolombiana and Mr. Hazelton was in Europe and that was actually Mr. Sebazco, who testified yesterday, the last witness for Grancolombiana.

THE COURT: All right. If you find the pages, correct them and initial the corrections.

MR. MULROY: May we do that, your Honor?

THE COURT: Yes.

BY MR. HOOPER:

Q Captain, I would like to show you this ventilation plan, which has been marked for identification as Plaintiff's Exhibit 11, and ask if you can identify it.

A This is a plan over the ventilation of the Mette Skou. Mette Skou is provided with high-pressure ventilation.

THE COURT: High what?

THE WITNESS: What we call high-pressure ventilation.

MR. HOOPER: I offer this plan into evidence.

MR. MULROY: No objection.

MR. GIALLORENZI: No objection.

MR. HOOPER: Mr. McConnell, any objection?

MR. McCONNELL: Your Honor, may I have the voir dire briefly?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. McCONNELL:

Q Mr. Larsen, is this a plan of the Mette Skou?

A This is the actual plan of the Mette Skou.

Q Or is this a plan of another vessel named the Ingrid Skou?

A Your Honor, the company have got a serial of ten ships of the same type and that is the plans for all the ten ships.

THE COURT: In other words, the plan is identical for every ship?

* * *

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Q Could you point out the ventilation ducts that bring the air into the deep tanks?

A As I have said before, the intake comes in front of the superstructure and it is let down to the deep tanks through a big trunk approximately 1 foot by 2 feet 8 inches, and it is let down to the bottom of the deep tanks at the center, one trunk per tank, one ventilator per tank.

Q Now, where does the air go out of the deep tank?

A The air goes out at the top of the tank. In the corner, the aft corner of both tanks, at the ship's sides, there is a trunk loading up through the 'tween deck and up to the main deck under cover, and there the air comes out.

Q Where are the motors that run the fans?

A These motors, electrical motors, they are situated in two steel houses on the weather deck in front of teh superstructure.

Q Now, that is the forward vertical line which is colored in red on this plan which you just pointed out, Captain.

Is it your testimony that the motor for the fan is at the top of this column?

A It is at the top of this column, that's correct.

Q And that is against the superstructure of the

vessel?

A It is a part of the superstructure.

Q When that motor runs, does it make any noise?

A It makes -- excuse me -- a hell of a noise. My cabin was just on the other side of that ventilator and I could hear it all twenty-four hours a day when I was in my cabin.

Q And the fan and motor for the other deep tank, you are pointing to the starboard deep tank now, where was that located?

A The starboard motor was outside my windows and the port motor was outside the chief engineer's window.

Q Now, this outlet vent which is the after vertical line on this plan which has been colored in red, where does that exhaust to?

A At the sides, your Honor, of the superstructure, we have two corridors so we can go freely from the fore deck to the after deck and the forward, as you can see here, it is covered and it is a part of the ship's side and a part of the superstructure with small holes in it as windows, but in here, inside there is this corridor leads out to the fore deck and inside there, protected from wind and weather, the outlet comes out.

Q Is that outlet open to the atmosphere?

A It is open to the atmosphere, that's correct.

Q Captain, in your deposition you testified that there was no plywood dunnage in the deep tank but there was plywood in the coffee.

How do you remember that there was no plywood dunnage in the deep tank?

A Your Honor, I don't know if you know, but in New York plywood is very, very expensive and it is a hundred times more expensive in Buenaventura, and as a matter of fact, they steal and they rob what we have of plywood down there, and as a matter of fact, we have been floored the whole ship over with plywood on the decks, 'tween decks as well as the lower holds, with plywood and paper, and when we left Buenaventura, the ship was full loaded with coffee except the space we have left for tobacco and the deep tanks. All plywood was used. Simply there was no more plywood on board the ship. Every bit of plywood was used between the coffee and the general cargo.

Q Now, Captain, there was some, there might be some confusion between your testimony on pages --

THE COURT: I want the deposition back, if I can get it.

Did you find those places?

MR. HECTOR: Yes, your Honor, there are just two

more.

MR. HOOPER: I am referring, your Honor, to pages 7, 93 and 98.

Q Captain, on page 7 you testified that when the ship was in the port of Buenaventura, Mr. Gooseman mentioned a yam cargo.

Did you know at that time that you were going to carry yams for sure?

A During our stay in Buenaventura, we had discussion with this Mr. Gooseman about our cargo in Cartagena.

We knew for sure that we were going to load tobacco and as an additional to this, he spoke there will be a possibility of a shipment of some yam, but it was not sure; it was just, it was hanging in the air, as we call it in Denmark.

Q Now, referring to pages 93 and 98 of the deposition, Captain, you testified there that you knew when you were in Cartagena that you were going to get a yam cargo.

Did you know at that time that you were going to definitely get a yam cargo?

A Upon arrival Cartagena, we were told that we are going to load tobacco and 6,500 cartons of yam.

* * *

MR. HOOPER: I offer Ove Skou Exhibits S and T into evidence.

MR. MULROY: No objection.

MR. GIALLORENZI: No objection.

MR. McCONNELL: No objection.

(Defendant Ove Skou Exhibits S and T for identification received in evidence.)

THE COURT: Are there specific portions of this that you are going to call to my attention?

MR. HOOPER: Your Honor, the deposition referred to certain records of temperature and I think these refer to that. They are in Danish, but the mate referred to them during his deposition and because of that I offered them into evidence.

THE COURT: All right.

Q Captain Larsen, I show you Ove Skou Exhibit K and ask you to tell me what it is.

A Your Honor, during my deposition I made a sketch of the deep tanks and this shows in three-dimensional way -- I am not Picasso -- but this one, this one -- height, height.

THE COURT: The height.

THE WITNESS: This refers to this one.

THE COURT: The height of the intake -- I suppose that is the intake you are pointing to.

THE WITNESS: Yes. That is the intake. It is coming out about 3, 2, 4 feet, I do not remember the exact height over the floor, but it comes out over the floor. There is a grille underneath here and the air is pressed down here, and as far as I remember this air will be shifted between twenty and thirty times an hour. The air comes down here and goes out up here.

Q Now, Captain, were there any holes in the structural members around that deep tank that are not depicted on that sketch?

A In this deep tank there is one lid through where we load and discharge the cargo. There is one manhole as shown here. There is sounding pipes and then there are one additional air pipe, you see. This one is also used for liquid bulk cargo and to keep the same pressure down in this tank we use this air pipe. We just open it a little and twist the cover so that air can go in and out, cargo extend a little if it is heated up and comes back to the same nature if it colls down a little.

Q Also, Captain, referring to the members that run horizontally around the sides of the deep tank that you have labeled "walking space," are there any holes in those walking spaces?

A Yes. We have two big frames, sumpter frames,

two places in this tank. Divides it in three sections. They are about 2 feet wide, these steel frames, and in each corner there is a hole so when we carry liquid bulk cargo it can go down to the bottom.

So, there is nothing left in the corners.

Q Now I would like to refer you to Exhibit R, which is the last page of Flota's Exhibit O with the exception that there were some marks made on R during your deposition.

Referring to the bottom diagram, the remarks "(in)," what does that indicate?

A This additional drawings I made, this refer to the intake trunk and this, up here I have indicated by an arrow the outlet.

Q The boxes drawn in, in the center of the diagram, do they refer to the location of the stow of yams?

A This refer to the stow of yams. They were stowed in eight boxes on the hold.

THE COURT: How many boxes were there in any one section?

THE WITNESS: I can't tell you.

THE COURT: I mean, what would be the number of cartons that would be piled up in one section, in any one section of the deep tank?

THE WITNESS: I did not count them. The ships --

THE COURT: There were 5,000 cartons?

THE WITNESS: Yes, and 2,500 in each tank.

THE COURT: 2,500 in each tank, and were they in four piles?

THE WITNESS: They were in eight piles.

THE COURT: So that there was about 300 in a pile.

THE WITNESS: Yes.

THE COURT: That means 300 from floor to ceiling?

THE WITNESS: That's correct.

Q Now, Captain, on page 61 of your deposition, you referred to the decision to stow the yams in the deep tanks.

Did you discuss the stowage of yams in the deep tank with anyone before they were stowed in the deep tank?

A The captain discussed the stowage with the Grancolombiana as agent and the shipper's representative in Cartagena.

They discussed the stowage of the tobacco and the stowage of the yam.

Q And was it after this discussion that the yams were stowed in the deep tanks?

A Yes, it was.

Q Now, Captain, in response to the Court's questions about the stowage of the boxes of yams in the deep tank, can you estimate how high up the deep tank the boxes extended?

A These piles extended about two-thirds up, which means about 12 to 14 feet up. The deep tanks is about 18 feet high.

Q Now, on page 83 of the deposition, you were questioned about instructions in the log book, instructions for preparing the log book which concerned logging ventilation of cargo.

Could you tell me whether these instructions require you to log each and every time cargo is ventilated?

A When we have got the cargo on board and when I have assured myself, the shipper has assured himself, the captain has assured himself that the ventilation was on, then we need not to make any entry in the log book.

Q If there was a failure in the ventilation machinery or gear, would you log book?

MR. McCONNELL: Would you note my objection to the previous response to the question.

THE COURT: What is the objection?

MR. McCONNELL: He just said it was the Flota

decision to load there and now he is saying it is the shipper's.

THE COURT: He didn't say that at all. He is talking about ventilation. He said that you don't make a notation in the log book when everybody has assured themselves that the ventilation is on, unless it is some previous question that you have in mind.

Q Now, Captain, if the ventilation machinery broke down during the voyage, would you log that?

A Certainly. If you see in this log book, we have a lot of failure -- winch failures -- that is recorded, and failure in ventilations will be logged as well.

Q Were any logged?

A No failure was logged.

THE COURT: There was no ventilation failure during the voyage?

THE WITNESS: Not at all.

Q Did you note the temperatures in the coffee compartment in the early part of the voyage?

A Yes. The first days of our passage when we crossed the Caribbean Sea, I did make some entries regarding the humidity in the cargo compartments, the normal holds.

Q Did those temperatures cool off during the early part of the voyage in the coffee compartment, or did

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they increase?

A May I see in the log book?

Q Sure.

A When we left Cartagena, the temperature was 26 degrees Celsius and during the day of departure it increased to 28, and then it started decreasing the next day, the next morning, until 26, 26, 27, and then it increased again to 29, which is in the high eighties, and through the vovage up to Jacksonfille the temperature decreased.

Q Now, Captain, stopping you there, I am interested in whether you can tell me whether you can remember whether, say, the coffee cargo cooled off from the time it was loaded in Cartagena or until the vessel called at Cartagena for a few days after she sailed.

Do you have any records or recollection of that?

Did you notice the truck which carried the yams to the Mette Skou in Cartagena? Did you see them?

A I saw them. It was small trucks, small fork lift towed trucks.

Q These trucks were towed with a fork lift?

A That's correct.

Q Were the yams protected from the hot sun when they were on these trucks?

A The yams was stowed on these small trucks without protection from wind and weather.

Q Now, Captain, as a general custom, when a surveyor comes aboard a ship, does he report to yourself as the chief made?

A Your Honor, in Danish vessels it is the chief mates who acts according to captain's order and the chief mate, he have full discretion with cargo and the stowage of cargo and everything, and it is customary -- I would like to see that surveyor who goes down into my cargo holds without telling me that he is a surveyor and he wants to see this and that cargo.

Q So, Captain, the surveyors usually ask you whether they can go down into a cargo compartment before they do so?

A They do.

Q Did any surveyor ask you whether he could go down to the cargo compartment or did any surveyor report to you when your vessel was in the port of New York discharging these yams?

A When we arrived New York the 1st of July, the usual Grancolombiana surveyor came on board and asked me to follow him around in the ship and we went through the ship, but the only place he did not went to was the deep

tank; and I would like to see a man of that age creeping up and down that deep tank.

Q Did anyone else, any other surveyor, report to you aboard the Mette Skou in New York at this time?

A No. The Grancolombiana surveyor was the only one who came to me and he was the only one I followed around in the cargo holds.

Q I just have one other thing, Captain --

THE COURT: Well, you saw this man who was in court here -- what was his name?-- Mr. McCabe, Austin McCabe. He was testifying in court here. Did you see him in court?

THE WITNESS: I saw him in this court.

THE COURT: Did you see him on your ship on July 1st or 2nd or 3rd?

THE WITNESS: I have not seen that man before.

THE COURT: Did he make an inspection of the deep tanks so far as you are aware?

THE WITNESS: No.

THE COURT: Did anybody ask permission for him to make an inspection of the deep tank or the cargo of yams so far as you know?

THE WITNESS: No.

THE COURT: To the best of your knowledge, would

anybody have been allowed to make an inspection of the deep tanks and the cargo of yams without reporting to you?

THE WITNESS: No.

Q Captain, just one more question --

THE COURT: Do you know the name of the man from Flota Grancolombiana that came on board?

THE WITNESS: Normally there were two men who did the survey, one one day, and another one the next day, and so on.

THE COURT: Do you know who they were?

THE WITNESS: I know who they were, but I can't remember their names.

THE COURT: One of them was not Mr. McCabe?

THE WITNESS: No.

THE COURT: Who were the names in those reports?

MR. HOOPER: Of the other surveyor?

THE COURT: Yes.

MR. GIALLORENZI: Howard Cray, your Honor.

THE COURT: Cray. Does that remind you that he had made a survey?

THE WITNESS: No, but if I would see the gentleman, I would certainly know him.

Q Now, Captain, on page 104 of your deposition you mentioned the term "ceiling of a tank."

Just so we all know what you are talking about, what is the ceiling of the tank?

A The ceiling of the tank is the wooden floor.

Q So, in maritime circles, a ceiling means a floor?

A In maritime circles, the ceiling is the floor, yes.

MR. HOOPER: I have no other questions, your Honor.

THE COURT: Let me ask you this: How long have you been sailing on these vessels?

THE WITNESS: Your Honor, I started my career at sea in '52 in a sailing vessel. Thereafter, I joined the Denmark, square rigger Denmark, for one year, and after that three years before the mast as AB, ordinary seaman.

In '56-'58, I went to the navigation school, one of them in Denmark, and in '58 I got my mate's ticket and in '59 I got my master certificate.

In '59-'60, '61 and '62 -- in '59 and '60 and the first half of '61, I joined the Royal Naval Academy in Denmark to widen out my horizons.

In '61 and '62, I did my service in the Danish defense staff as a left first class, and I ended in June '62 and went to sea as mate, third mate in the same company where I served as apprentice, and that's the Danish company called

United Steamship Company. Over here you recall it as the Scandinavian American Line.

THE COURT: Now, how many years did you spend on ships of the class of the Mette Skou?

THE WITNESS: I have spent -- I joined the sea as a mate in '62,so that will be for about fifteen years.

THE COURT: On the same class of ship all that time?

THE WITNESS: Always dry cargo ship and vessels, your Honor.

THE COURT: How about vessels of the class that you just described a little while ago, when you had the diagram, how long did you spend on that kind of a ship?

THE WITNESS: That must be about ten years.

THE COURT: During that period of ten years, did you have the occasion to carry cargo from southern countries?

THE WITNESS: Yes.

THE COURT: Did you have occasion during that period of time to carry vegetable cargos?

THE WITNESS: Yes, your Honor.

THE COURT: Do you recall any occasions when vegetable cargos were stowed in the deep tank?

THE WITNESS: Yes. Actually, in one period of eighteen months I was chief officer and teacher on board a cargo carrying school vessels of the United Steamship Company and this ship runs from Scandinavia to South America, and every time we went from Santos to Buenos Aires we carried bananas in bulk in deep tanks as well as in normal cargo holds.

THE COURT: Well, bananas are not carried in covers, are they? They are carried, the skins on the banana are the only cover that is on a banana when it is shipped in a cargo ship, isn't that so?

THE WITNESS: These bananas were without any cover.

THE COURT: Did you ever have occasion to carry any other type of vegetable or fruit in the deep tank?

THE WITNESS: Yes. I have also been on board a similar cargo vessel named "Ohio" and we did the service between Haifa, Israel, and Copenhagen with oranges, and we carried about 110,000 cases and they were stowed in deep tanks as well as in the other cargo holds.

THE COURT: Did you have occasion to carry yams at any time during this ten-year experience of yours, other than on the occasion in question here?

THE WITNESS: This particular yams was the first

yams I have seen in my life and I haven't seen them since.

THE COURT: Now, at the time that you were loading in Cartagena, was there a choice of where the yams could have been stowed?

A When we arrived Cartagena, we knew for sure that we were going to load a certain amount of tobacco bales and tobacco smells and tobacco have to be kept away from any other cargo.

So, number 1 lower 'tween deck, number 1 upper tween deck and number 5 'tween deck was just the exact space for this tobacco. Therefore, the hatches, hatchways to number 5 lower hold and to number 1 lower hold was buttoned down and three tarpaulins was put over and everything was made airtight so no smell could come down there.

THE COURT: Where else could you have stowed these yams, considering the cargo that you were already carrying?

THE WITNESS: If we have known in good time that we are going to carry 6,500 cartons of yams to New York, then we could have taken the general cargo for St. John, New Brunswick, into the deep tanks. This cargo was stowed, as far as I remember, on number 3 'tween deck after part --

THE COURT: What was it? Coffee?

THE WITNESS: No, it was textile. And we could have taken, filled the deep tanks up with New York coffee from number 3 'tween deck and number 2 'tween deck. Then we would have had enough space to carry the yams on the 'tween deck but during our stay in Buenaventura nobody told us for sure that we are going to have these yams, so therefore we loaded the ship as we did.

THE COURT: Well, would it have been possible even if time-consuming to have shifted the cargo from where it existed to the deep tanks and use the other spaces for the yams?

THE WITNESS: It would have been possible.

THE COURT: Was that possibility discussed with the charterer's agent?

THE WITNESS: That I don't know because this, these discussions were made between the shipper's representative, Grancolombiana representative, and the captain.

THE COURT: All right.

Any cross?

MR. McCONNELL: Briefly, your Honor.

* * *

CROSS-EXAMINATION

BY MR. McCONNELL:

Q Mr. Larsen, you mentioned that there were 6,500 cartons of yams comprising the total shipment of yams on the vessel.

A That's correct. We carried 6,500.

Q How many shipments did that comprise?

A To my knowledge, this was two -- 1,500 for one man in New York and 5,000 cartons for another one in New York.

Q Would it refresh your recollection that the survey report shows that there was one lot of 500 for one man and one lot of a thousand for another man and then the 5,000 which are the subject of this complaint?

A That I am not aware of.

Q That being the case, approximately how many cartons were in each compartment?

A We had about 6,500 on board. I did not count them, but they were placed half and half.

Q Now, Captain, assuming they were tiered up to thirteen tiers high, how many cartons would that be in each tier?

A If I knew the exact size of these cartons and if I had time enough to do it, I could calculate and then

find out how many cartons there were in each block.

Q Could you divide 13 into 6,500?

THE COURT: It wouldn't be 6,500. It would be half of 6,500, wouldn't it?

MR. McCONNELL: Your Honor, it is evenly, half and half, so the number that you would arrive at --

THE COURT: 6,500, if there were 6,500 cartons in two tanks, that means that there were only 3,250 in each tank.

So, if there were thirteen piles, divide it that way.

Were there thirteen piles in all or twenty-six piles?

Q What does a tier mean, Captain Larsen? Does that mean a layer of boxes?

A That depends. Sometimes we call a tier -- that is one block --

THE COURT: Well, it goes up to the ceiling, doesn't it?

THE WITNESS: From the floor to the ceiling. Only one carton high, that is one tier across the ship. But we also call it one tier, one layer. That means one carton spread out all over the floor.

THE COURT: A tier is just like a floor.

* * *

How many floors high were the cartons? is what the question is, really.

I thought we had that figure, that he had them in four different blocks.

MR. McCONNELL: Well, perhaps I can clarify the point, your Honor.

Q If they were stowed, as you say, thirteen tiers, and there are 6,500 all together, would you agree that there were more or less 500 crates in each tier and 250 in each tank in each tier? I mean covering the whole, all of the blocks.

A I agree.

Q If the cartons of the other one or two shipments were stowed mostly in the top tiers and the total number of those cartons was 1,500, would not that account for the top three or four tiers?

A It certainly would, but I did not know yet whether the 500, the 1,000 or the 5,000 came first or second or they came mixed.

Q Well, do you ever mix cargo when you load it? Or do you stow it by mark?

A Your Honor, the mates always try to keep marks away from other marks, but as a matter of fact, when you are loading with eight, nine, ten gangs, sometimes the cargo

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will be mixed; overstowed, shortshipped, shortlanded or whatever you call it.

Q By the way, Captain, what kind of bunker oil did you carry on the vessel? Was it bunker C?

A In our bottom tanks we carried heavy fuel for the main engine and diesel for the auxiliary engines.

Q Is that what is known as bunker C, the heavy fuel?

A Yes.

Q Do you know if the Ardina shipment, which is the subject of this suit, was stowed in the upper or lower part of the deep tanks?

A I cannot say.

Q Would you agree with the statement of the surveyor of the Grancolombiana Line, which has been marked in evidence here, that these two shipments of 1,500 total were stowed mostly in top tiers?

A I have no idea about that.

Q If you remember.

A I don't remember.

Q Captain, if something was described to you as being warm to the touch, what would that mean to you?

A Warmed to the touch?

Q To the touch. Warm to the touch.

A That would be around 37 degrees Celsius.

Q In other words, it would be above the normal body hear of 98.6 degrees Fahrenheit.

A That's correct.

THE COURT: What is 98 in Centigrade?

MR. McCONNELL: Your Honor, I have a table here, if you will just give me a moment.

THE COURT: Most Europeans think in terms of Centigrade rather than our use of Fahrenheit, and that is the reason I would like it translated.

MR. McCONNELL: 36 degrees, your Honor? 36.9, your Honor, is 98.3.

THE COURT: That is my recollection.

Q If yams were warm to the touch, would that indicate to you that they exceeded normal body heat?

MR. HOOPER: I object to this line of questioning, your Honor. The Captain is not an expert as to what normal body heat is.

THE COURT: He is an expert in body heat at his age. I am sure he must know what body heat is.

MR. HOOPER: But not the body heat of yams, your Honor.

THE COURT: Well, you know, you pose a very interesting question. I know a lot of people who have cold

* * *

MR. McCONNELL: Your Honor, the survey report of the charterer shows that in the number 3 deep tanks, both tanks were floored off with cartons of yams stowed ten to thirteen tiers high on plywood, with plywood platforms between every third tier.

THE COURT: All right. Ask him that question.

Was there plywood on the way up to the ceiling -- I don't mean the ceiling as you have described what a ceiling is. I am talking about the ceiling as we understand the ceiling.

Your use of the word "ceiling" is a reference to a floor, is that correct?

THE WITNESS: That's correct.

THE COURT: Now, we turn it upside down in this country and we say the ceiling is up in the sky.

Where was the plywood in the deep tanks, if at all?

THE WITNESS: I must say for the first plywood only appeared between the coffee and the general cargo. There was only flat donnage, as we call it, that is wood pieces of 1 inch by 4 inch by 10 feet -- that donnage was the only wood present in these deep tanks.

No responsible officer will put plywood between fruit cartons.

Q Why not?

A You stop the ventilation.

Q And now you contend that there was no plywood between these tiers?

A There was no plywood between these tiers of yam.

Q Now, were you in attendance with the surveyor of the vessel every time he was aboard during the period of unloading of the Mette Skou in New York?

A Your Honor, I have been listening to these surveyors --

THE COURT: Just answer his question. Were you there when the surveyors, the Flota surveyors, were there?

THE WITNESS: I have not been in the deep tanks together with the Grancolombiana's surveyor, no.

THE COURT: What you are saying to me is that the tiers, the boxes or cartons of yams, were set on 2 by 4's, what we call 2 by 4's?

MR. McCONNELL: Your Honor, he said 1 by 4 or 5 inches.

THE COURT: I know, but to uneducated lumbermen like myself, we call them 2 by 4's. They are just long pieces of lumber?

THE WITNESS: That's right.

THE COURT: And you put them around, make a

frame and set things on them.

Do you know what I mean by a 2 by 4? I don't care whether it was 1 by 6.

You see that piece of wood up there that is at an angle, the two angles. That is what I would call a 2 by 4, if you had a long one. Is that what separated the cartons?

THE WITNESS: You are right, your Honor.

THE COURT: Mr. Hooper, let's see what is on the other side of that.

Are you telling me that wood like the pieces that make up the frame were the separating components of the tiers and not plywood boards?

THE WITNESS: That's correct.

THE COURT: Is that what you say?

THE WITNESS: That is what I am trying to tell you.

THE COURT: Now, Mr. McConnell wants to know how it is that a report comes in and says that sheets of plywood separated the cartons.

That is what you are saying, isn't it, Mr. McConnell, plywood sheets?

MR. McCONNELL: Your Honor, it not only has been the testimony --

THE COURT: Please don't amplify it and give me witnesses for it. I am asking you, is that what you are contending?

MR. McCONNELL: Yes, your Honor.

THE COURT: There is quite a difference between a 2 by 4 and a sheet of plywood.

MR. McCONNELL: There is quite a difference, your Honor, and since this gentleman --

THE COURT: I would like to know why anybody would want to use sheets of lumber to separate tiers. I mean it just doesn't sound right to me, but maybe they did it. It looks as though the surveyor said so.

MR. McCONNELL: Your Honor, it most definitely appears that it has been done in this case and that accounts for the reason of the bad outturn of this cargo, because as Mr. Larsen said, if it was done, which this report says it was, and the man saw plenty of plywood in other places.

THE COURT: You have a contradiction in the evidence, certainly.

MR. McCONNELL: Absolutely, and I ask that the strictest inference be drawn from it because of the nonproduction of this surveyor by the defendant and third-party plaintiff.

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THE COURT: The proof in the case is yours, you know. You have the burden of proof.

MR. McCONNELL: I don't think I have the burden, your Honor, to show --

THE COURT: Where are the surveyors, by the way? I would like to find out what the answer is. I would like to find out why anybody would want to use plywood under boxes.

MR. GIALLORENZI: I discussed this matter at length in preparation for the defense of this case, with the surveyor, and I asked him several pointed questions, one, did you see any ventilators --

THE COURT: No, I don't want to start that.

MR. GIALLORENZI: I have to combat the presumption that he is raising against me.

THE COURT: But you cannot do it with a statement out of court by a prospective witness. I mean, I cannot take that as proof.

Let me ask you this question: You say that the coffee was separated by sheets of plywood from something else, is that right?

THE WITNESS: It was protected, the coffee was protected from rusty drainage by one layer of plywood covered with paper, not --

THE COURT: And we are talking about sheets of plywood, are we not?

THE WITNESS: Yes, sir.

THE COURT: What was underneath the plywood?

THE WITNESS: Steel deck.

THE COURT: So that the plywood was resting right on the deck?

THE WITNESS: On the deck.

THE COURT: Was there any area in cargo where plywood was used in between tiers of merchandise?

THE WITNESS: Yes. Between the bundles of textile to stabilize these -- as you see here, your Honor, between number 2 and 3 we have one big block of tailors or St. John. If I don't put --

THE COURT: Where did you put the plywood?

THE WITNESS: Between the bales, so these bales together with these big sheets of plywood will make one big solid block.

THE COURT: What was underneath the plywood? On top of the plywood you had the bags.

THE WITNESS: On top of the textiles we have coffee which again rested upon plywood laying on the top of the tailors, the textiles. Underneath the textiles was plywood resting upon the wooden ceiling; the wooden floor,

excuse me.

THE COURT: All right. The contention here is that you used the same method of separating cargo from other cargo in the deep tanks as you used in this other area, the difference being that you were separating the same kind of cargo from the same kind of cargo, rather than from textiles being separated from coffee. That is what is being contended here.

All right. Go ahead, Mr. McConnell.

What was the answer to the question as to where the surveyor is?

MR. GIALLORENZI: He is here in New York, your Honor.

THE COURT: OK.

MR. GIALLORENZI: Mr. McConnell has known that.

THE COURT: Available for subpoena?

MR. GIALLORENZI: Yes, your Honor.

THE COURT: OK.

Q How many openings are there into these deep tanks, each one?

A To each deep tanks for the first, there is one big lid as far as I remember, 9 by 11 feet; there is a manhole just big enough so a normal built man can come up and down from the tanks, come up and down a fixed steel ladder,

and then there are sounding pipe and this air pipe, 6 inches wide.

The lid, the manhole, the sounding pipe, the air pipe.

Q Are there any other openings into or out of the compartment?

A No.

Q In other words, there are no ventilator openings into the tank?

A There are the ventilation openings, of course, yes.

Q Those six?

A Six.

Q Now, am I correct that this space is used to carry liquid cargos?

A The deep tanks in a normal modern cargo vessel is built in such a way that it is suitable for general cargo as well as liquid bulk cargo.

Q In other words, you could seal this compartment completely?

A We can seal it almost completely, yes.

Q Are there any heating coils associated with these deep tanks on the Mette Skou?

A Underneath the wooden ceiling we have heating

coils.

Q What is their purpose?

A It is the purpose of these heating coils, according to the name, to heat up cargo.

Q Is it possible that the coils may have been energized at some time during the voyage?

A It is impossible because they were leaking; they were out of order and therefore according to charter party it was not allowed to carry liquid cargo in those tanks.

Q That is not what I asked. I said is it possible that they could have been energized?

A It is not possible.

Q Captain, or -- excuse me -- mate, do you have to heat bunker C before it can be used in the machinery?

A Your Honor, I am not a mechanic; I am not an engineer, but I know that when we are cruising in cold water we heat up our fuel to get it out of the tanks and this fuel is refined and put into other tanks and heated up to about 80 or 100 degrees Celsius, so it can be used in the main engine.

Q Do you know the name of the tank where the fuel is located prior to its being pumped to the engine? Is it called the settling tank?

A It is called the -- no; there you are not correct.

Q What is it called?

A We pump the oil from the deep tanks into the settling tanks and according to the name there the oil is settled. The water will be beneath the oil.

Q Now, at that point in the settling tank, what is the temperature of that oil?

A I don't know.

Q It is heated oil, though?

A It is heated oil, yes.

Q On this vessel's diagram, I would like to draw your attention to this space immediately after the deep tank and ask you what that tank is called as shown on the diagram.

A That is called a settling tank, but --

Q Captain, you have answered the question. You don't have to say anything more.

A But I will.

THE COURT: No, you wait until the other lawyer asks you.

THE WITNESS: OK.

THE COURT: Mr. McConnell has the privilege of hearing only so much as he wants to hear.

Q Now, Mr. Larsen, during the voyage, am I correct that except for those times when you descended through the manhole to take temperatures, which are not recorded in any log anywhere, the manhole cover was closed?

A The manholes were closed.

Q That change of air that you spoke about, I believe you said twenty to thirty times an hour --

A I said twenty to thirty times an hour.

Q Is that with the tanks empty or loaded with cargo?

A That is when the tanks are empty and when the tanks are full.

Q You mean there is no difference?

A No.

Q Captain, referring to the figures that are shown on this plan, can you tell me what that means there? Can you read that line that I am pointing to?

A 300, something, electrical vent, deep tank starboard port.

Q Is that 300 pounds per square foot or meter or something like that?

A I don't know.

Q Where do the vents exhaust air from the number 3 'tween deck and lower hold, according to the plan?

* * *

comes out at the same place as the electric fan draws the air down in for the number 3 deep tank?

A Yes.

Q So, in other words, you are pumping stale air from the forward holds down into the deep tank, isn't that correct?

A No.

Q Am I right that you were wrong before about the fact that this is the intake?

THE COURT: He said it was the trunk. He said the trunk.

THE WITNESS: Your Honor, this high pressure --

THE COURT: Did you say it was the trunk leading to the 'tween deck?

THE WITNESS: Your Honor, these ventilators, they are reversible, so it can be either inlet or outlet.

Q Well, how about, what way was that used?

A It was used both ways. Sometimes we suck from the hold and sometimes we press to the hold.

Q Are you aware of the requirement for vegetable cargos that air should be withdrawn from the holds, preferably by mechanical means?

A I am aware of it, yes.

Q What is the size of the inlet vent in the

number 3 deep tank?

A These trunks are of 1 foot by 2 feet 8 inches.

Q How many cubic feet of air, approximately, can that thing pump in one hour?

A It is very easy to calculate. If you shift the air 25 times into a tank which can take 15,000 cubic feet, then it can shift 15 times 25 cubic feet per hour.

Q For one little vent?

A To one little vent. Don't forget, it is high pressure.

Q 300 pounds per square meter doesn't sound very high to me. That is what the plan says, doesn't it?

A I don't know what that means.

Q Well, do you know what it is?

A I know what it is. I have tried. Maybe you have not. I have tried to stand before such a ventilator.

Q Upon the arrival of this vessel in New York on the particular voyage in question, when were the tank lids removed from the number 3 deep tanks?

A The tank lids were removed the second day of our stay in New York just before discharge. It was the 2nd, about 7:45 in the morning.

Q Upon the removal of the tank lids, would air from the atmosphere flow into the deep tank?

* * *

Q How many shipper's representatives did you claim to have seen in Cartagena?

A I don't recall his name, but it was a big fellow.

Q In other words, one person?

A One person.

Q How many shipments were there, again?

A You said what?

Q How many shipments were there if yams?

A As far as you say, three or four.

Q Well, I say three.

You don't know whether he was there just to pick up bills of lading and things like that?

A He was not. Otherwise he won't have been standing there on top of the coffee overlooking the whole entire loading.

Q But it was the master in consultation with the charterer who decided where to stow these yams?

A These three persons, shipper, charterer, captain, in a united -- they make the decision together.

Q And the captain told you where to stow them?

A And the captain told me how to stow it, and I can tell you the shipper was extremely satisfied.

Q Well, Mr. Larsen --

MR. McCONNELL: Your Honor, I would like to strike that last remark.

THE COURT: Strike out "he was extremely satisfied."

Q Would it be proper to carry cotton piecegoods, cartons of yarn and such like, in the deep tanks?

A Yes.

Q Were the deep tanks just as easy to work as the other compartments?

A Yes.

Q Why didn't you load the cotton piecegoods and other things like that that were aboard the ship in the deep tanks where you knew they wouldn't be injured?

A When you load a ship and you load these few tons and you cross the Caribbean Sea where you can get a lot of wind and a lot of swell, you do just like an old fox; you have another opening ready. This was also meant for taking in ballast in case of bad weather from Colombia to United States.

Q In other words, you would pump ballast in there with the yams?

A Not when the cargo was in, but when we loaded in Buenaventura we did not know we were going to have any cargo in those tanks, so therefore they were kept for ballast

purposes.

Q I thought the charter party said that you couldn't carry any liquid cargos in there.

A Any liquid cargo. That does not mean ballast.

Q What kinds of cargos have you normally carried from South America?

A We carry timber, we carry coffee, textiles, machinery, any kind of cargo.

Q Are not vegetable cargos a normal commodity from South America?

A That kind of cargo is also normal from Colombian ports, yes.

Q You mentioned that you had never carried Colombian yams before.

A I never carried Colombian yams before.

Q Did you seek advice from anyone with respect to its stowage?

A No.

Q Assuming that part of the shipment in fact arrived undamaged and that all factors were equal except that the undamaged lot was stowed on top of the damaged lot and mostly above plywood dunnage, would you not conclude that it was the manner of stowage rather than the type of packing that caused the damage?

* * *

A When we arrived Cartagena, we knew for sure that we were going to load tobacco and yams.

Q And at that time you had the number 1 and number 2 'tween decks available and the number 5 'tween deck and the deep tanks.

A It was number 1 lower and number 1 upper 'tween deck and number 5 'tween deck and the deep tanks. Those compartments were empty.

Q Could the yams have been loaded in any one of those 'tween decks?

A The yams could have been stowed in all these compartments.

Q Captain, just a moment, please. You testified that Grancolombiana's representative discussed the loading of the yams with the master into the 'tween decks.

Were you present when those discussions took place?

A I was not present.

MR. GIALLORENZI: In view of the fact that the witness was not present with regard to the testimony that he gave concerning the agreement between the agent of Grancolombiana and the master as to the cargo in the 'tween deck, I ask that it be stricken on the ground that it is hearsay.

* * *

representative of Grancolombiana come aboard the vessel at Cartagena?

A The representative of the Grancolombiana came on board upon arrival.

Q And what did he come on board for?

A He came on board to do all the services between the ship and the local authorities. He came on board to deliver the mail for the crew and he came on board to tell the captain and me what we were going to load.

Q What was loaded first, the tobacco or the yams?

A The yams and the tobacco was loaded at the same time. Tobacco in number 1 and 5, and the yams in the deep tanks.

Q Would the 'tween decks have been a better place to load the yams, rather than the deep tank, in your opinion?

A With such a capacity of ventilation as we have on board the Mette Skou, it was not a matter of it would have been better on the 'tween deck or on the lower hold. All holds were suited for carrying yams.

Q Did the question of the vessel's stability come into consideration when you were loading the yams in the deep tanks?

A The stability of the ship lays the problems -- the problems about that lays always very hard upon the chief

mate's shoulders, but in this -- at this time an extra load of yams either in the 'tween deck or in the lower hold would not affect the stability of the ship.

THE COURT: In other words, the stability of the ship was not involved in this loading operation, is that it?

THE WITNESS: That's correct.

Q Now, I show you Exhibit O, which was the letter that you wrote to your head office, and draw your attention to the following paragraph:

"The shipper's representative supervised the entire loading and expressed his approval of the ship's way of stowing the cartons."

"The ship's way of stowing the cartons," would that be the manner in which you stowed the cartons?

A When you start loading a ship --

THE COURT: He just wants to know to whom you were referring in that clause when you talked about "the ship's way."

THE WITNESS: It was my supervision of the longshoremen.

Q And during that loading, there is no reference that the charterer's agent was there supervising it; only the shipper's agent, isn't that correct?

A The only man who overlooked the whole entire

loading of the yams was that big fellow from the shipper.

Q After the loading was completed and the vessel was about to depart, did you discuss anything with the Grancolombiana's representative when he came aboard the ship?

A We did not discuss the stowing.

Q At all?

A At all.

Q Do you know the number of cubic feet in the deep tanks, the combined cubic feet?

A As far as I remember, one of the tanks is a little bigger than the other one because there is a trunk running through them, but I would guess that they are about between thirteen and 15,000 cubic feet each.

Q So that would be a minimum of 26,000 or a maximum of 30,000 cubic feet for the both of them?

A All together, that's correct.

Q Now, you calculated the stowage factor of the cartons in Flota's Exhibit O to be 1 1/2 cubic feet per carton, is that right?

A That's right.

Q So that how many cubic feet were used to stow the 6,500 cartons in both tanks, total amount of cubic feet?

A With all the space between the cartons with these canals for ventilation, plus all these, the 3 feet from the -- these blocks to the bulkheads all the way around, I'll guess that I used about 20,000 cubic feet of those tanks.

Q These walkways around the tanks that you showed in the diagram which you prepared of the tank, how many apertures did it have in each foreplate? How many openings in each one of these walkways?

A There is an opening in each corner.

Q And would that allow the air to go up?

A It will allow air to go up and down, as well as liquid cargo.

Q And if you had cartons of yams stored in the deep tanks, would that allow the air to flow through the portions where the cartons were stowed and through the air canals which you described?

A The way of my stowage of these cartons allowed the air to get a very good passage between cartons, and between cartons and bulkheads.

Q Would these holes permit the air to flow from the bottom of the tanks up and then out?

A That's correct.

Q At Cartagena, you did remove some bags of coffee from the number 3 'tween deck?

A That's correct.

Q And could you have re-stowed those bags of coffee into the deep tanks?

A We could. But actually --

Q Just a moment. You could.

Could you have stowed in the palce of the coffee in the deep tanks the cartons of yams?

A Yes, but there wouldn't have been sufficient space in the 'tween decks.

Q In the number 3 'tween deck there would not have been sufficient cubic?

A No. Because we only moved 1,000 bags.

Q Could you have moved more than a thousand bags?

A We could have unloaded the whole ships.

Q Could you have removed 3,000 bags and placed them in the deep tanks?

A We could.

Q If you had removed the 3,000 bags of coffee in the 'tween decks and placed them in the deep tanks, would you have had sufficient cubic space to stow the yams in the number 3 'tween deck?

A Your Honor --

Q Captain, please give me a yes or no on that.

A It would have been possible.

THE COURT: You know, Mr. Giallorenzi, I am wondering why you are proving a case against yourself.

MR. GIALLORENZI: Well, I am just stopping now.

THE COURT: It just seems to me that you are overlooking the fact that the loading factor is your problem.

MR. GIALLORENZI: I know, your Honor.

Q When the vessel arrived at New York, Mr. Cray came aboard. Did he discuss with you the stowage of the yams in the deep tanks at any time?

A He did not.

Q Did he discuss with you the stowage of other cargo aboard the vessel?

A He did.

Q What did he say to you and what did you say to him about the other cargo that was stowed on board the Mette Skou?

A I don't remember actually what we were discussing, actually, but it was the cargo and we overlooked the ship but not the deep tanks.

Q Did he make any remarks at all with reference to the manner in which the cargo was stowed in the deep tanks?

A No.

MR. GIALLORENZI: I have no further questions, your Honor.

THE COURT: Do you have any questions, Mr. Mulroy?

MR. MULROY: Your Honor, you read the deposition and it has been marked in evidence. Page 39, lines 21 to 23, and page 15, lines 19 to 22. I have only those six lines, your Honor.

THE COURT: What is it you want to call to my attention?

MR. MULROY: Your Honor, that the determination to unload the coffee before the yams was made by Grancolombiana and not by ITO.

I have nothing else, your Honor.

MR. HOOPER: I have a very few questions, your Honor.

REDIRECT EXAMINATION

BY MR. HOOPER:

Q Captain, did you inspect the deep tanks during the voyage?

A I inspected the deep tanks as well as the other compartments every day.

Q Did you physically climb down into the deep tanks?

A I physically opened the manholes and went down the ladder and around in the deep tanks.

Q Did you find everything in order during the voyage in the deep tanks?

A In my opinion, everything was in good order and condition during the whole voyage.

Q There was some questioning on cross about the settling tanks, Captain.

I believe you stated that the fuel oil carried in the vessel's double bottom is only heated when the vessel is in cool water; is that correct?

A That is correct.

Q And from the double bottoms, the fuel goes to the settling tank?

A That is also correct.

Q When the vessel is in cool water, is the oil in the settling tank heated?

A Yes.

Q You wanted to explain something about the settling tanks and you were cut off.

What was that?

A According to regulations, you have to have what we call a cover dam. It is a space which always have to be kept empty from engine room to cargo holds. We also

have cover dams between double bottom tanks for fuel and for fresh water. It is just a security precaution when you build the ships.

THE COURT: Are you saying that there was a cover dam or dams space between the settling and the deep tanks, is that what you are saying?

THE WITNESS: That is what I am saying.

THE COURT: If the oil is heated up that was in the settling tanks, would it have any appreciable effect on the temperature inside of the deep tanks?

THE WITNESS: No.

THE COURT: All right.

Q Did you take temperatures in the deep tanks every day during the voyage?

A I took temperatures in the deep tanks every time I was on that --

THE COURT: That is in the deposition, isn't it?

Q Captain, you read the entire deposition, didn't you?

A I have written it a lot of times.

Q Subject to the few changes and explanations we have made here this morning, do you agree with the deposition testimony?

A I agree with it.

THE COURT: You agree with your own testimony.

THE WITNESS: Yes, sir.

MR. HOOPER: No further questions.

THE COURT: Thank you very much. You may step down.

(Witness excused)

THE COURT: Any other witnesses?

MR. HOOPER: Yes, sir.

THE COURT: The issues are clearly drawn here. Let's see if we can't move this case a little faster.

MR. HOOPER: Yes, sir.

K J E L L H A N S E N, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

THE COURT: Now, let's get down to cases here. Were you the captain on this ship?

THE WITNESS: No.

THE COURT: Sorry. I thought you were the captain on the ship.

DIRECT EXAMINATION

BY MR. HOOPER:

Q What is your occupation, Captain?

A I am a surveyor.

* * *

taken from the ship, placed on the pier where they remained for a few days, and then taken to various places in the New York City area at which time they were found to be damaged.

Do you have an opinion of the cause of that damage?

A You were saying that the damage was fusarium rot or --

Q I am saying -- I should add one more -- that the plaintiff is claiming not for fusarium rot and not for sprouting, but for heat damage. Let me also add that the temperature in the deep tanks remained about the same as the atmospheric temperature during the entire voyage and that the United States Department of Agriculture noted that there was no soft rot present when they examined the shipment on July 2.

Would you have an opinion as to the cause of the heating damage to these yams?

A I would think that heat damage could have been caused by excessive heat and perhaps lack of ventilation at some time.

MR. HOOPER: Would you mark these photographs as the next exhibit.

(Defendant Ove Skou Exhibit U marked for

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identification.)

Q Captain, I show you Defendant Ove Skou Exhibit U for identification and ask you if you can tell me what it is.

A These are photographs depicting cartons of yams, of plantains.

MR. HOOPER: Would you mark this diagram, which was marked Exhibit A at a deposition in August of '75, marked for identification.

(Defendant Ove Skou Exhibit V marked for identification.)

MR. HOOPER: I will offer Exhibit V into evidence.

MR. MULROY: No objection.

MR. McCONNELL: It is already marked as part of Plaintiff's Exhibit 13.

MR. HOOPER: In any event, to make things clearer, I would like to offer this alone.

(Defendant Ove Skou Exhibit V for identification received in evidence.)

Q Captain, I show you Ove Skou Exhibit V and ask you to assume that this is a rough sketch which I prepared at the deposition of the shipper of the yams, which shows the kind of box in which these yams were shipped, and I ask you whether that could be a cause -- whether that box

would have any relationship between heating damage and lack of ventilation.

A I notice that this particular box does not have the ventilation holes in the side. I would think that a box like that would not permit air to flow through, obviously would not permit air to flow through the carton.

THE COURT: Are you saying that the carton would be a contributing cause to heat damage?

THE WITNESS: Yes, sir.

Q I show you Exhibit U for identification and ask you to tell me what kind of cartons are shown in those photographs.

A A similar type as to the one on the sketch.

Q Where were those photographs taken, if you know?

A These photographs were taken on board one of the Prudential Line vessels.

Q Where did the cartons come from that came on the Prudential Line vessel?

A I believe this particular shipment came from Colombia.

I could be wrong. It came from South America, anyway.

Q Are those cartons the same kind of cartons as depicted in the sketch which is Exhibit V?

A Yes, sir.

MR. HOOPER: I offer U for identification.

MR. GIALLORENZI: No objection.

MR. MULROY: No objection.

VOIR DIRE EXAMINATION

BY MR. McCONNELL:

Q Am I correct that these are boxes of plantains and not yams?

A Yes. I said that.

MR. McCONNELL: No objection.

(Defendant Ove Skou Exhibit U for identification received in evidence.)

BY MR. HOOPER:

Q About how many shipments of yams do you examine in the course of a year, Captain?

A Our office would -- eighty, maybe.

Q Do you examine yams on Prudential Grace Line vessels?

A Yes, sir, we do.

Q Yesterday, or one of the days during this trial, I believe it was Mr. Sousa testified that some yams came in aboard a vessel named the Santa Cruz in June of 1974 and that this vessel contained yams which were shipped in one compartment which was well ventilated and that these

yams outturned in good condition; that yams were shipped in another compartment down near the bottom of the vessel, overstowed, not well ventilated, and they outturned in poor condition.

Did your office conduct a survey of this vessel?

A Yes, sir, we did.

Q Do you have that report with you today?

A Yes, I have. I have it in my briefcase.

MR. HOOPER: I would like the survey reports dated July 22, 1974, marked for identification.

(Defendant Ove Skou Exhibit W marked for identification.)

MR. HOOPER: Would you mark the report of August 6, 1975, for identification.

(Defendant Ove Skou Exhibit X marked for identification.)

Q Captain, I show you Exhibits W and X for identification and ask you if it is the regular course of your business to prepare survey reports.

A Yes, sir, it is.

Q Were these reports prepared in the ordinary course of your business?

A That's correct.

MR. HOOPER: I offer the two reports into evidence

Any objection?

MR. GIALLORENZI: No objection.

MR. MULROY: No objection.

MR. McCONNELL: I have no objections, with the understanding that it is not the witness who prepared the surveys.

MR. HOOPER: His firm did.

MR. McCONNELL: But he did not see them.

MR. HOOPER: That's correct.

(Defendant Ove Skou Exhibits W and X for identification received in evidence.)

Q Captain, have you looked over those reports which your office prepared?

A Yes, sir, I have.

Q Can you agree or do you agree or disagree with the testimony of Mr. Sousa that some yams go to one compartment well ventilated outturned in fine condition, a lot of other yams stowed down near the bottom of the ship outturned in poor condition?

A I disagree with that.

Q How did the yams outturn, or, first of all, were yams stowed in two separate compartments in the ship?

A Yes, sir. I believe they were stowed in number 1 upper and lower 'tween decks.

Q Was one mark of yams in one place and one in another place?

A Sir, I don't have the sorting sheet, but I believe they were intermixed. In other words, there were only a small portion in the lower 'tween deck and I think that part of one mark was in both compartments.

Q Was there any difference in the outturn between the upper 'tween deck and the lower 'tween deck?

MR. McCONNELL: May I suggest that the report speaks for itself and that we don't need to hear further on this?

THE COURT: I would like to hear what the expert says also.

You may answer.

Q Could you answer that question, Captain?

A The one mark outturned with 23 percent or it was found at the time of the survey, estimated 23 percent rot in one, and 15 in the other mark.

Q Was there any difference between the outturn in one compartment as opposed to the other compartment?

A No significant difference.

Q What did the survey reports attribute the cause of the damage, or what damage was noted, first of all? Would you like to see the reports?

A Yes, I would

Q I'll show you a copy.

THE COURT: It says the main reason that the yams were out of condition was the fact that they were all -- is that what you want?

MR. HOOPER: Yes, sir.

Q Was there any difference in the ventilation of the boxes of the two different marks of yams in that shipment?

A Yes. There was a note here referring to page 2 on the first report, 2609, the paragraph, "We note that the yams were individually wrapped with paper and that the Andina brand boxes were without any side ventilation holes."

Q Do you think that the lack of side ventilation holes has any effect on the stowageability or ventilation of the yams within the box?

A I believe so, yes. It doesn't necessarily mean that a shipment coming in, in a box without side ventilation holes, could not outturn good, though.

Q But you think a box with side ventilation holes is preferable to one without?

A Definitely.

MR. HOOPER: I have no further questions, your Honor.

THE COURT: Any questions?

CROSS-EXAMINATION

BY MR. McCONNELL:

Q Does McCabe Inspection Services customarily inspect for Vana Trading Company?

A As far as I know.

Q Did you survey yourself any shipments of 1974 Colombian yams?

A I probably did. I don't recall.

Q Which ones?

A I don't know.

Q I have the reports for McCabe for most of the shipments here and I don't find your name among any of them, Captain.

A Possible. We have eleven surveyors in my office.

Q Would you agree with me that you didn't survey any of the shipments?

A I don't know. I have to check the reocrds.

Q Those that you have surveyed, are they customarily shipped in cartoned boxes?

A Since I believe 1971 or 1972, thereabouts.

Q And they have this paper wrapping that has been described?

A That's correct.

Q Now, did your office survey a shipment on the Santa Cruz on July 17?

A Of what year?

Q Of '74. From the Santa Cruz.

A On July 17? I don't know. The same ship that we have here?

Q Yes.

A No. On July 23, I believe it was.

Q I have July 17.

A If you are referring to the second report, number 2697, the report states that it was conducted on July 23.

Q I am referring to the arrival of the vessel Santa Cruz on July 17, 1974.

A I am sorry. That would be the next voyage.

Q Yes.

A I am sure we did, but I don't know.

Q Do you recollect whether or not there was any damage on that vessel?

A No. I have no idea. Without checking the records, I wouldn't remember.

Q Does your report show low long the Santa Cruz, which you have referred to, took to come from Colombia to

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dunnaging used.

Q Can you calculate the pressure?

A I suppose you could without dunnage.

Q Wouldn't the dunnage just add to the pressure basically?

A No. It would even out the pressure.

Q It would even it out over the entire lot?

A Yes.

Q Can you calculate that?

THE COURT: What is the effect of the pressure?

Q What is the effect of the pressure of thirteen tiers on lower tiers of boxes?

A It is quite a pressure, I agree with you.

Q Would it tend to crush them?

THE COURT: Suppose there is pressure there and you don't get any crushing because the cartons are sufficiently stiff to avoid any crushing. Would the fruit get hurt?

THE WITNESS: I don't believe so.

Q Would the fruit be bruised?

A Not without pressure from the cartons. If you have severe crushing of cartons, yes, you would probably have bruising of the fruit.

Q Wouldn't thirteen tiers of stowage of yams,

55-pound boxes, tend to create a little crushing at the bottom tiers?

A It could create crushing of it. Not necessarily. I don't know exactly whether it would. I have seen yams stowed thirteen tiers high.

MR. McCONNELL: That is all.

THE COURT: Anybody else?

MR. GIALLORENZI: No cross-examination.

THE COURT: Mr. Mulroy?

MR. MULROY: No questions, your Honor.

THE COURT: Thank you very much. You may step down.

(Witness excused)

THE COURT: Is he a short witness or a long witness?

MR. HOOPER: Short witness.

THE COURT: Really short enough to take before lunch, or do you want him back later?

MR. HOOPER: I would think he is going to take about the same time as this witness.

W I L L I A M P A T R I C K F E R R E N, called as a witness on behalf of the defendants, having been first duly sworn, testified as

follows:

DIRECT EXAMINATION

BY MR. HOOPER:

Q Dr. Ferren, by whom are you employed?

A I am a professor of chemistry at Wagner College.

Q Could you briefly state yoru qualifications to be a professor of chemistry at Wagner College.

A I hold the B.S. degree in chemistry, the M.S. degree in analytical and chemical engineering, and the Ph.D. in food science and agricultural biochemistry.

Q And after you got the Ph.D., where did you work?

A Best Foods Corporation, for a period of about six years.

Q In what capacity?

A I was a research chemist and I worked under Dr. Gooding, who was one of the inventors of antimold, an antifungal agent.

Q How long did you study antimold and antifungi?

A We spend about five years on that project.

Q Are you familiar with a condition known as fusarium rot?

A Yes, sir.

Q Just what is it?

A Well, fusarium is a fungi imperfectity, which is

a type of mold. In simple terms, it is a plant that doesn't have any differentiation in terms of structure. It is found in soil, usually soil with high acidity and it is good for the soil, it is beneficial for the soil because it produces a kind of cement which enables the soil particles to form a proper matrix. It is an aero, it lives in competition with bacteria and as long as there is enough oxygen, the fusarium can prosper.

Q What if there is not enough oxygen?

A If the oxygen supply is depleted, the fusarium no longer survives and bacteria can take over.

Q Now, Doctor, are you familiar with yams?

A In a general way, in terms of any other food product. I have not worked directly with yams.

Q Assuming that the Department of Agriculture inspected some yams and found them to be firm, 2 to 26 percent average, 9 percent dry-type fusarium rot, no soft rot, and that all tubers had sprouts from 1/4 to 1 1/2 inches in length. Stopping at sprouts for a minute. Could you tell me what is necessary for a sprout to grow?

A A sprout would indicate that the period of maturation is passed and it is going back to resprout.

Q In other words, that this is an old yam?

A An old yam or an old vegetable.

Q Now, if the yam was allowed to store for several months in a temperature of 90 to 95 degrees, then packed in a newspaper, wrapped in a newspaper-type of newsprint without the printing on it, and placed in a box, such as is shown in Exhibit V, for shipment; first of all, could you tell me what effect the wrapping of newsprint would have to the yam insofar as heat is concerned?

A Well, a newspaper is a very good insulation material. It would probably maintain an adiabatic, that is, a non-, a minimal heat transfer situation. Newspaper is used to make things known as calorimeters -- in other words, it is very excellent as an insulator and would hold heat.

Q Would it allow any oxygen to pass through?

A In my opinion, gases would probably be permeable.

Q But not heat?

A But not heat.

Q Stopping there for a minute, does a yam generate its own heat?

A A yam, like any other vegetable, is carrying out the essential biochemical reactions of life. One of them in particular, called the crib cycle, involves an exothermic, or heat-producing reactions, I should say.

Q Let's look at the box. With the handhold on each end and the small slot on the top, what effect would

that have concerning the heat that is generated by the yam?

A This being a cardboard carton, it would also act as an insulator and it would be better if it had more holes.

THE COURT: When you say "act as an insulator," you mean it would contain heat?

THE WITNESS: Yes, sir.

THE COURT: If there was a self-generation of heat of the contents, it would tend to be retained within the box and within the newsprint packing, is that correct?

THE WITNESS: That's correct, sir.

Q Now, let's get back to the box. What would the effect of the box be on the ability of oxygen to reach the yam?

A Well, the carton and the paper might inhibit the rate, but I feel that there would be diffusable, it would be permeable to the gases.

Q Assuming that the Department of Agriculture measured the pulp temperatures of yams and found them to be between 80 to 100 degrees Fahrenheit and noticed them to be firm and noticed that they had dry fusarium rot, what sitnificance do you place, if any, in the presence of dry fusarium rot on yams after they were outturned in New York City?

A Well, if I can separate the two words, the fusarium's presence might be not too surprising, but the word "rot" indicates that it had done some damage to the food product and probably penetrated in some way and made it inedible.

Q Do you think that the fusarium might have penetrated the skin and that is why they used the word "rot"?

A Yes.

Q What significance would it have just in the presence of fusarium on the yam that has been wrapped in the paper and is in the carton?

A Here it is a matter of viewpoint. We are looking at it in terms of a human food, but fusarium per se is a beneficial mold. It is an aero, requires oxygen, and many molds are very useful. This particular mold performs a very essential task in the soil.

Q Let's stop at aero and oxygen.

Does the presence of fusarium tell you that oxygen was able to reach this yam?

A Yes, sir. It is an aero.

Q And does the presence of sprouts tell you that oxygen was able to reach the yam?

A Yes, that would indicate that the yam was going through its normal aerobic phase.

Q And if the 6,500 cartons of yams were stowed in two deep tanks, which you have heard described this morning, and if the ventilation wasn't supplied to the deep tanks, would there have been oxygen reaching these yams and would the fusarium have grown during this voyage or remained alive during this voyage?

A The fact that they were in an aerobic condition when they arrived indicates to me they were getting oxygen.

I am no -- period.

Q In other words, this place was being ventilated?

A There was oxygen present.

Q Does the yam itself put off any kind of gas?

A Well, as I said before, like all living entities, it is carrying on a combination of very complex metabolic reactions, simplifying them to their limit, it means they are undergoing respiration, taking in oxygen, giving off carbondioxide and water.

Q And if no outside air was blowing into this space during the voyage, what would happen in that space?

A Well, in the constant competition for living forms, if the aerobes don't have oxygen, the anaerobes take over.

Q And how would that have been manifested?

A Anaerobic metabolic reactions are characterized

by extremely foul putrification odors and it is very unpleasant.

Q And this would have been readily noticed when the space was opened at the end of the voyage?

A I believe so.

MR. HOOPER: I have no further questions.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. McCONNELL:

Q When fusarium dies, does it go away or remain on the vegetable?

A It won't prosper. It will go into a decline.

Q Stay on the vegetable?

A It depends on what time. In other words, it is not an instant death. It might be there in other form.

Q But you can see it, right?

A Well, not if, if the situation is changed from one of having oxygen to one of not having oxygen, other changes will have taken place at the expense of the fusarium.

Q That is not what I am asking you.

If you were to inspect the yam or the vegetable or whatever, would you see it?

A Under what condition, sir?

I don't follow the question.

Q Following having been damaged by heat, let's say, for example.

A If the fusarium was on the yam and it had oxygen, it would still be there regardless of heat.

Q Would you say that fusariums exist in all soils, all soils?

A In most soils, yes.

Q So that fusariums are common on vegetables?

A Quite, yes, sir.

Q Does bruising promote the rotting of vegetables due to fusariums entering the vegetable?

A That would be its mode of entrance, bruising or wounding or whatever opening. The skin acts as a protective barrier, so if that is broken --

Q If care is used in harvesting and selecting the vegetables so that the vegetable does not have any holes, so that the soil is cleaned off of it in any event and stored carefully and handled carefully, rather than mechanically and thrown around and things like that, would you expect that those vegetables would be more resistant to fusarium than ones that were roughly handled?

A Yes. I think I see your question. Under ideal, you know, handling and packaging and so forth, you would certainly minimize it, and if you were a hundred percent

perfect, outside of some anomaly.

Q Is it possible to be a hundred percent perfect with the handling of vegetables?

A Well, nothing, few things ever are, but you could certainly minimize the effect.

Q Is the respiration of any vegetable raised for each and every degree the temperature around it is raised?

A As a rough rule, every ten degrees doubles the rate. It is sometimes an autocatalytic effect. Once you get increase in temperature, your metabolic rate increases, producing more heat, producing even a greater metabolic rate. So once you kick off at a certain point, it just continues to ...

THE COURT: But is is a synergistic effect.

THE WITNESS: Yes, sir, that is about right.

Q Is there any effect on vegetables from poor ventilation?

A Yes. Vegetables require aerobic conditions.

Q Is there a difference between ventilation and air circulation?

A Well, ventilation is a movement of air, so it is kind of an exercise in semantics, really.

Q Would I be more or less correct if I said that ventilation is the process of bringing the air in,

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and circulation of the air is the circulation of the air once it is brought into the space by the ventilation, into a space, any space?

MR. HOOPER: I object to the question. I think it is out of the expertise.

THE COURT: The definition of the word "ventilation" means to render or break into with air, and I suppose into a space that hasn't got it.

I don't see what we are getting at here.

Q Well, is it possible that you can have a ventilatio without a proper air circulation and destroy vegetables?

A I am having a little trouble with the two. To me, the two words are so close, ventilation and --

Q We'll strike that then.

If you don't have a proper air circulation, do you create damage to the vegetables?

A If the vegetable does not have an adequate air supply, it will become -- it will go out of its normal aerobic healthy phase.

MR. McCONNELL: That is all.

THE COURT: No further questions?

Thank you very much. You are excused.

(Witness excused)

THE COURT: That concludes the ship's case?

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AFTERNOON SESSION

2:10 p.m.

THE COURT: All right, gentlemen.

E D W A R D C O M A C H O C R O C E, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOOPER:

Q I show you Plaintiff's Exhibit 3 and ask you if you are affiliated with Acme Carting Company.

A Yes, I am.

Q How are you affiliated with them?

A I own it.

Q I draw your attention to the "Remarks" portion of Plaintiff's Exhibit 3, which reads, "Ending July 10, 11, 12, 13, removed from above premises 1,816 boxes of yams Andina."

Where did that information come from?

A This I got from West Indies.

Q In other words, West Indies told you what to write on the bill?

A They told me what they threw out, yes.

Q Are you here pursuant to a subpoena?

A I have a subpoena, yes.

* * *

Q So that when the customer wants to have a record of what is thrown out from any particular point, do they then call you and ask you to give it to them?

A Yes, they do.

MR. McCONNELL: Thank you.

THE COURT: What did you cart away? Do you know?

THE WITNESS: I cannot honestly say because I am not there to check it out. My men do the picking up.

THE COURT: Well, were 1,800 cartons removed, or is that some figure that somebody gave you to put down?

THE WITNESS: These were figures given to me by West Indies.

THE COURT: Have you any idea as to whether it was a truckload, a half a truckload, or could you tell from your records what you actually did take away?

THE WITNESS: We don't keep any actual records on this here book what does happen. It doesn't go out in one solid truckload. As you can see, it is four different days, so it could be just like regular rubbish thrown out, part of a truckload, a half, a third, I don't honestly know.

THE COURT: So you have no record as to whether it was a hundred or a thousand cartons?

THE WITNESS: No.

THE COURT: Any further questions?

MR. GIALLORENZI: No questions.

MR. MULROY: No questions.

MR. HOOPER: No further questions.

THE COURT: Thank you very much.

(Witness excused)

MR. HOOPER: I just have two additional things, your Honor. I requested Mr. Giallorenzi to stipulate that owner Ove Skou tendered the defense of this matter to the charterer on January 14, 1976, and that the charterer rejected that tender.

MR. GIALLORENZI: I so stipulate, your Honor.

MR. HOOPER: Then I prepared a list of the pages and lines of the shipper's deposition upon which Ove Skou relies.

Do you wish me to hand that up?

Defendant Ove Skou has nothing further, your Honor.

(Document handed to the Court)

THE COURT: Mr. Hooper, for my general edification, what in substance do these pages of the deposition Diaz sum up to?

MR. HOOPER: Basically, your Honor, they are the pages -- they mainly concern our case against, say, the plaintiff, the defense to the plaintiff's case, rather

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THE COURT: Does that complete the case for your client?

MR. HOOPER: Yes, it does.

THE COURT: Defendant Ove Skau rests.

Is there any affirmative defense on behalf of ITO?

MR. MULROY: Yes, your Honor.

THE COURT: Please proceed.

J O H N F L Y N N, called as a witness on behalf of defendant ITO, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MULROY:

Q By whom are you employed?

A International Terminal Operators.

Q In what capacity?

A Pier superintendent.

Q At what pier?

A 60th Street piers.

Q Is that the army base terminal?

A Known as the army base terminal.

Q How long have you been in that capacity for ITO at that pier?

A Six and a half years.

Q Now, in connection with the discharge of the Mette Skou, were the services rendered by ITO in connection with that vessel under your supervision?

A Yes.

Q Now, how many gangs were registered on behalf of ITO at that terminal on or about the end of June 1974 available for service?

A Six.

Q And do you regularly have registered six gangs for use at that terminal?

A Yes, sir.

Q Now, would you state to the Court what you mean when you say registered.

A Six gangs are listed to -- their first work call must be at my terminal. If I don't employ them, they can go elsewhere.

Q Now, what is the situation with regard to the availability of labor? Where do you obtain the six gangs?

A Well, six gangs are employed through the Waterfront Commission hiring hall. We order them through the hall.

Q Now, does the hiring hall guarantee that they will furnish you with these six gangs?

A No, they don't guarantee anything.

Q So, would I understand that if the labor is available, then you have six gangs, is that correct?

A Yes, but the six gangs usually respond.

Q Do you have any recollection of the number of gangs ordered for the discharge of the Mette Skou to commence on July 1, 1974?

A Yes, I do.

Q How many gangs do you recollect having been ordered?

A Five gangs ordered for a Monday morning, 8 o'clock start.

Q Did you receive those five gangs on that morning?

A No.

Q How many gangs did you receive?

A Let me clarify that.

Portions of all five gangs showed up, but not the entire units. Portions of each unit showed.

Q Taking the total number of men that you had, how many full gangs would you have had?

A After we checked the men in -- I don't recall how many men were missing, but whatever the amount was -- we called the hiring center to get replacements. We were told by the hiring center there was not sufficient men to supply

this labor.

We then took two of the steady gangs and split them up and put the men in the remaining gangs to fill them out. We ordered five and ended up with three.

Q Assuming taking the quantity of cargo that was on the Mette Skou and assuming you had a full complement of six gangs or five gangs, in how many days would you expect to get that ship out? Did you have a deadline?

A I don't recall the amount of cargo on the Mette Skou. I do recall that the efforts were made in the direction to complete the ship prior to the July 4 holiday.

Q Who told you that?

A It was a representative from Grancolombiana.

Q Did you complete discharging the ship before the date that you were told to complete discharging?

A Completed the ship at 7 p.m. on July 3.

Q In connection with the discharge of the 5,000 cartons of yams from that vessel, and as a matter of fact, let me show you the delivery book, Exhibit N, just so you are aware of the 5,000 cartons that we are talking about in this case, were you on board the vessel and did you observe the discharge operation?

A At various times, yes.

Q Now, during the period of time that you were on

* * *

Q Let me direct the witness' attention to the last two deliveries. Would you read this aloud?

A "There were two exceptions to this: 27 cartons crushed, contents intact; 21 cartons recoopered, gross weight 680 pounds."

Q On the basis of those remarks, would these indicate to you that there was in fact some crushing to the cargo in this case, irrespective of how it occurred?

A We are admitting to 27 cartons crushed, but I don't say that was a result of the net. I could have crushed them on the dock with a hi-lo or something.

Q Assuming that there was some crushing occurred, would this record that you have in front of you be the official record between the deliverer and the receiver as to the quantity that was crushed?

A Yes. There were only three exceptions noted here: 27 cartons crushed, contents intact; 21 cartons recoopered, gross weight for the 21 cartons 680 pounds; on dock remaining 18.

THE COURT: What does "21 cartons recoopered" mean?

THE WITNESS: Your Honor, these cartons were damaged or --

THE COURT: What does "recoopered" mean?

* * *

A No.

Q Now, when you have cargo on the pier that is not picked up by the consignee, what is your practice and what did you do in this case?

A Well, in this case, because it was a perishable item, I instructed the chief clerk to please get in touch with the consignee and effect the delivery.

This never happened and I checked with him at various times and he said he felt that the cargo was being abandoned; and at a later time a federal employee -- I don't know whether it was an agricultural inspector or a Pure Food and Drug man -- came to me and he ordered me to dispose of the 18 cartons. He said they were attracting insects and they were smelling and whatever, and I had to dispose of them.

Q Did you make an official record in connection with this condition with regard to these 18 cartons at the time?

A Well, I haven't read this. This is a reply from me at the pier to my company when they told me that a claim had been put in.

Q And is that called a damage report, or words to that effect?

A Damage report, yes.

* * *

cargo from a cargo net?

A The fastest way?

Q Right.

A Take the cartons and put them onto pallets and then take the, with a fork lift, take the pallets away.

Q What happens when the draft gets down onto the pier? Isn't it the fastest way to release one side of the net off the hook and then signal to the man at the winch to haul away on the other end?

A Not on a cargo of yams, no, sir.

Q But isn't that the fastest way to unload a cargo net?

A Yes, it is, if it was bales of rubber or --

Q Would you take a look at that discharge book and tell me if you see two other cargos of yams indicated there.

A Yes. There is another lot of 1,000 cartons and another lot of 500 cartons.

Q Now, is there a space in that book to write exceptions to the delivery of cargo?

A Designated in the book?

Q Is there a column to write in all the things that are wrong with it?

A No.

* * *

Q Now, this loading team that has been referred to, by whom are they employed, and by that I mean the checker, the hi-lo driver and the --

A ITO.

Q Now, when a consignee wants to get his cargo, with whom does he make the appointment to have a trailer truck go to the pier?

A He goes to the pier and registeres at the gate and presents his papers to the delivery office.

Q Is that a delivery officer employed by ITO?

A Yes.

Q Is the appointment made for the truck to go to the pier with ITO?

A It should be, yes.

Q Not with Grancolombiana?

A With the pier, it should be.

Q Do you have an appointment book for army base for July 1, 2 and 3?

A No, sir.

Q How long would it normally take to load a truck with, let's say, 950 cartons of yams?

A I would guess at, truly it depends on what time the truck gets there because there are two coffee blows during the day, but I would say four and a half hours.

Q Well, assuming a truck arrived at 9:49, taking into consideration the coffee breaks and the loading of 950 cartons, how long would it take to load the truck or the trailer?

A It depends on what time he gets assigned the checker, the hi-lo and the laborer are available.

Q Did you have any shortage of checkers, hi-lo drivers and loaders on July 3?

A Possibly. I don't recall.

Q It was stipulated that on July 3 one truck entered the facility at 12:48 and left at 4:20, the army base, with no service.

Does that mean they didn't load the trailer?

A What was the comment, no service?

Q Yes.

A That we couldn't service the truck; there were no people available to do that truck.

Q They would be employed by your firm, ITO, not the Grancolombiana?

A Yes.

Q On July 5, '74, also one truck arrived at 10:48 and left at 11:17, no service.

Does that mean there is no one available?

A Not necessarily. What happens is that there are

times that we tell the truckmen that we can service you, but they will have a wait of perhaps two to three hours, and the truckmen decide to leave, to go elsewhere.

Q Ordinarily, how long would it take to remove 5,000 cartons of yams from a pier?

A By what means? I mean, if you are boarding a barge, you could move them --

Q By trucks.

A Again it depends on the size of the truck, sir. I mean, if each truck took 500 cartons and you sent in ten trucks and you had appointments for ten trucks, they could all be done in a half a day.

Q Now, prior to the vessel's arrival, were you advised of the type of cargo that was on board the ship?

A I was told the cargo consisted of yams and coffee.

Q And did they tell you where the yams were stowed?

A No. I don't believe I received any papers on the ship until the representative from Grancolombiana came down on the pier on Monday morning, July 1, and he brought down some sort of stowage papers with him.

Q On July 2, is that the date that they unloaded the yams?

A I don't know. I have no records of it.

Q Were you present when the yams were being

* * *

MR. HOOPER: I have no questions, your Honor.

MR. MULROY: Your Honor, may I on redirect?

REDIRECT EXAMINATION

BY MR. MULROY:

Q Would you explain to the Court the procedure with regard to the tally clerk that you assign to the trucks that are going to remove cargo off the pier, as to what his function is.

A Well, he is to see that the proper cargo is getting delivered to the proper truckmen and --

Q How about the condition of the cargo?

A To count the cargo and to make notations as to the condition of the cargo in conjunction with the truckmen.

Q When he makes the notation as to the condition of the cargo, he makes it on a tally sheet, is that right?

A Yes.

Q He turns the tally sheet over to whom?

A The delivery clerk.

Q If there is any exceptions on the condition of the cargo, the delivery clerk enters it on the delivery book, is that correct?

A Yes, if the tally and the truckmen concur, he will then make the notation.

Q It is at that time that the truckman is asked to

sign the delivery book that you have in front of you that is marked in evidence?

A Yes.

Q Then when the delivery for the ship is complete, you turn the delivery book over to the people who employed you, in this case Grancolombiana; is that correct?

A Yes.

Q I show you this document entitled OS&D report. Is that the document that you referred to on cross-examination?

A Yes, sir, it is.

Q And is that consistent with the damage report that you prepared sometime after a week after this litigation started?

A I referred to this.

Q In preparing that?

A Yes.

Q So that the damage report that has been marked in evidence is based upon this document you are holding in your right hand?

A Right.

Q What is the document that you are holding in your right hand based on?

A The finished product of this book.

MR. MULROY: Could I have this OS7D marked in

evidence, if there is no objection.

VOIR DIRE EXAMINATION

BY MR. McCONNELL:

Q What date was this report prepared?

A May I see it? Customarily it is made thirty days after the cargo has --

Q Thirty days after the ship discharges?

A Customarily, yes.

Q And it is made by your own personnel, right? What is the date on the report?

A The date of time of report was 9/11/74.

Q September 11?

A Right.

Q What time did free time discharge expire?

A Free time expired on July 12, 1974.

Q I notice the figure "18" is under the column "Short," and it has been crossed out and then written "on dock" in this report.

A I testified earlier there were 18 cartons remaining on the dock.

Q No. I am pointing to this figure under the column "Short." It has an "18" there and then it is all struck out.

A It is crossed out, right.

* * *

refers to the same type of cargo and it illustrates the cartons in the ship on pallets.

Now, does this represent the type of stowage on pallets that you gave the cargo that you testified to whereby you said that at least one side of each carton would be exposed to the air?

A No. These pallets have a center tier.

Q What photograph are you looking at?

A The bottom one. They have three tiers across with two tiers on top as a binder. The bottom has three, the top has two. I testified we had two tiers, period.

MR. MULROY: I have no further questions.

RECROSS-EXAMINATION

BY MR. GIALLORENZI:

Q Did Grancolombiana pay for unloading the vessel and also terminal services, that is, stacking the cargo and tearing it down and delivering it to the consignees?
Did you receive payment from Grancolombiana for unloading the vessel and as a terminal operator as to the cargo on the pier or the shed until it was taken away?

A Well, my principals went into an agreement with Grancolombiana and I assume we were paid for the services.

Q The terminal services?

A Stevedoring and terminal, yes.

MR. GIALLORENZI: Thank you very much.

MR. McCONNELL: Your Honor, I have further questions of the witness.

RECROSS-EXAMINATION

BY MR. McCONNELL:

Q Mr. Flynn, is July 4 an ILO holiday?

A Yes.

Q Was July 5, 1974, an ILO holiday?

A No, sir.

Q What is your experience with respect to the availability of labor on a Friday following a holiday on Thursday?

A I don't recall any previous experience along those lines.

Q You think the men -- is it your experience that the men all show up for work?

A I doubt it.

Q You mentioned that with respect to the exceptions marked in this delivery book that they are written in there if your checker concurs that the damage is there; is that correct?

A If he concurs with the truckman. If the truckman complains and he accepts the complaint, the tallyman then registers it on the tally and they both go in and explain it

to the delivery clerk.

If all parties agree, it is registered in the book.

Q That is a pretty long drawn-out procedure, what happens --

A No. It is common procedure in the report.

Q What happens if there is a complaint made but the deliveryman doesn't concur? Is a notation made?

A If the clerk cannot get all three parties to come to an agreement, they would send for me as the pier superintendent. If the gravity of the matter was brought to my attention and I could get nowhere, I would call my principals and get in a surveyor.

Q Isn't it a fact that the dunnage would have been left aboard the Mette Skou since the dunnage belonged to Grancolombiana?

A Most likely, yes.

MR. McCONNELL: That is all.

MR. HOOPER: Your Honor, I have a few questions.

CROSS-EXAMINATION

BY MR. HOOPER:

Q Were you on board the vessel Mette Skou during its discharge?

A Yes, sir.

Q Did you look down into the deep tanks of the vessel?

A I looked in all the hatches that were being worked.

Q Do you remember seeing any plywood either in the deep tank or any plywood being lifted out --

THE COURT: Plywood sheets.

Q Sheets of plywood in the deep tank.

THE COURT: Above the floor of the tank.

Q Do you remember seeing any sheets of plywood above the floor or the ceiling of the deep tank?

A Plywood, no.

MR. HOOPER: I have no further questions.

THE COURT: All right.

MR. McCONNELL: I have a question.

FURTHER RECROSS-EXAMINATION

BY MR. McCONNELL:

Q Where aboard the ship did you see plywood, if at all?

A I recall plywood was used on the tanktop covers under the coffee.

Q Is that all?

A That is all I recall, yes, sir.

Q You were all over the ship looking?

A I looked in every hatch that was being worked by my employees each day.

Q Were you accompanied by Mr. Larsen, the mate? The mage tho testified here this morning?

A Is that Mr. Larsen (indicating)?

Q The blond-haired fellow.

A I recall seeing him on board the vessel at various times and a couple of other deck officers. They relieve each other, but I do recall seeing Captain Larsen.

Q Did he accompany you around when you went around looking?

A I believe he did. Not at all times, but on occasion.

MR. McCONNELL: No further questions.

THE COURT: Thank you very much, Mr. Flynn. Step down.

(Witness excused)

THE COURT: Anything else?

MR. MULROY: Third-party rests.

THE COURT: All parties rest?

MR. McCONNELL: Your Honor, I do have some rebuttal.

THE COURT: Go ahead.

MR. McCONNELL: First of all, your Honor, with

* * *

THE COURT: Because you didn't sell them. You didn't get them. It is a nondelivery.

MR. McCONNELL: It should be included with the number that you have left there.

THE COURT: But you left them on the pier.

MR. McCONNELL: Your Honor, the plaintiff was never --

THE COURT: Who is responsible for that?

MR. McCONNELL: The plaintiff was never given those, your Honor. Somebody has written in the delivery book "18 left on pier," but --

THE COURT: I don't accept that somebody has written into the delivery book. Somebody has, official records put into evidence show that 18 were left on the pier.

MR. McCONNELL: Your Honor, the official record shows that the only delivery tendered was the 5,000 minus 18, not the 18.

THE COURT: I don't spend all afternoon trying to figure that out.

MR. McCONNELL: There is no tender of the 18 at any place.

THE COURT: What do you make of the $16 1/2 for 4,749 cartons?

MR. McCONNELL: $78,358.50, your Honor.

THE COURT: I get $77,258.50.

MR. McCONNELL: The quantity again is 4,749.

THE COURT: Yes.

MR. McCONNELL: $78,358.50, your Honor.

THE COURT: $78,358.50. Is that the figure you get?

MR. McCONNELL: Agreed, your Honor.

THE COURT: That is the amount of the claim that you are asserting here, is that right? As the plaintiff's loss?

MR. McCONNELL: Yes, your Honor, for sound market loss.

THE COURT: All right. Now, Mr. Giallorenzi, what is your case against the shipowner?

MR. GIALLORENZI: Your Honor, the plaintiff has stressed that the damage was caused to the yams by reason of the failure to supply sufficient ventilation to the hold and as a result of the failure to supply sufficient ventilation to the hold they say that the plants, the yams become overheated and damaged. I am not going to address myself to our defense to the plaintiff's claim, but simply to our claimover.

Now, the charter party clearly provides that the captain shall use diligence in caring for the ventilation of

* * *

JUL 19 1976
S. D. OF N. Y.

jb-1

Vana Trading Co., Inc.,

vs.

THS SS METTE SKOU, etc.

75 Civ. 1278
(MP)

May 20, 1976

Pollack, J.

FINDINGS OF THE COURT

THE COURT: The charter party placed all authority and responsibility for cargo operations on the charterer. It was entirely the charterer's operation in connection with these yams in loading the cargo and the participation of the officers of the vessel was as the agents for the charterer, Flota, and not for the owner. That is borne out by Nichimen Company v. MV Farland, 462 F. 2d 319 (Second Circuit, 1972) and International Produce, Inc., against Frances Salman, 1975 AMC 1521 at 1544-5 (Tenney, J., Southern District of New York, 1975).

I decide and find that the ship was not unseaworthy; that ventilation was not warranted in the charter party but, in fact, existed and that the ventilation was appropriate in the deep tanks for the shipment of merchantable cargo if delivered on board in good condition, properly packed and wrapped and, accordingly, the third party claim of the charterer, Flota

Mercante Grancolombiana, S.A., against Ove Skou is dismissed on the merits, with costs to be assessed against Grancolombiana in accordance with the prevailing authorities in this Circuit, including the MV Farland case mentioned above and cases following that doctrine.

The ship owner is entitled to recover legal expenses in the amount to be agreed upon by the parties or, upon appropriate application, at hearing, to be fixed and entered by the Court as costs and fees due to the ship owner.

With respect to the claim of the plaintiff against the charterer, the rule is clear that when two or more parties have contributed by their fault to cause property damage in a maritime cargo situation, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault and that liability for such damage is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.

In connection with that doctrine, the liability, if any, of ITO to Grancolombiana would represent a claim over by Grancolombiana to the extent that ITO contributed to the damage. It would not increase the amount of plaintiff's claim but it would be an element in determining the comparative fault of Grancolombiana and ITO.

jb-3

It seems clear to the Court, and I find on the evidence submitted to me, that the damage was due to a combination at least of the circumstances created or contributed to by the shipper and the charterer (and ITO with the charterer); that the yams were packed in cartons that may be described as non-breathing and wrapped in newsprint paper which produced a cooking effect as testified to by one of plaintiff's witnesses and then stowed in a deep tank at the direction and under the responsibility of the charterer some thirteen tiers high and subjected to a measure of heat which caused the yams to continue the cooking process and decay. Any of these circumstances alone probably would not have resulted in the damage. The combination brought on the destruction of the yams to the extent that has been established.

When there is concurrent fault in that way, the loss occasioned thereby does not entitle a plaintiff, to whom fault is attributable by reason of being the shipper of merchandise in the circumstances above, to claim a recovery for the full value as a premium for its fault.

Accordingly, on these findings of fact, Flota Mercante Grancolombiana, S.A., will be held responsible to Vana Trading Co., Inc., for its comparative degree of fault in the circumstances and the parties will be given an

jb-4

opportunity to determine and fix that respective liability in default of which the Court will determine the appropriate damages, bearing in mind the rule that liability for such damage is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault.

Additionally, International Terminal Operating Co., Inc., will be held responsible on the third party complaint against it by Grancolombiana to the extent that its fault contributed to the fault assessable against Grancolombiana and, here again, the parties will be given an opportunity to reach that measure. In default of agreement the Court will fix the damages under the well-settled rule that where there are wrongdoers and there is uncertainty, the risk of the uncertainty which wrong has created will be resolved from the circumstances in the best way possible by the trier of fact. Such a resolution has been applied in the admiralty context. For example, see the Petition of M/V Elaine Jones, 480 F.2d 11 at 23-24 (Fifth Circuit, 1973), modified on other ground, 513 F.2d 911, cert. denied, _____ U.S. _____ .

The foregoing findings of fact will be amplified more fully in formal findings in which will be incorporated the proposed findings that were agreed upon by the parties

jb-5

so as to constitute a complete decision in the circumstances and together, the foregoing findings, together with those to be incorporated will constitute the findings of fact required by Rule 52(a) of the rules of practice.

To summarize, judgment of dismissal may be entered forthwith on behalf of Ove Skou, the amount of its expenses and counsel fees to be added at the foot of the judgment upon appropriate application and there being no reason for delay, the Court hereby, in pursuance of Rule 54(b), directs that a separate judgment may be entered thereon.

As to the remaining parties, the Court will await any attempts which the parties may wish to make to reach an allocation based upon the comparative degree of their fault via amicable negotiation and, failing such an agreement by June 1st, the Court will proceed to a determination of the respective degrees of fault ascertainable by the best estimate available from the evidence in the record and enter judgment accordingly.

The foregoing represents a resolution of all of the issues of credibility on the basis of the testimony, the exhibits and the demeanor evidence.

So ordered.

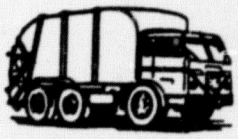
* * *

PLAINTIFF'S EXHIBIT 3.

EDWARD CROCE CARTING, INC.
SUCCESSOR TO
ACME CARTING COMPANY
60 SOUNDVIEW AVENUE
RYE, N.Y. 10580

212-991-7456
914 TE 5-0027 after 6

RUBBISH & GARBAGE
REMOVAL SERVICES



To West Indies Tropical Foods
Bronx Terminal Mkt
Bronx N.Y.

P3

MONTH ENDING July 10 - 11 - 12 - 13 -

Removed from above premises

1816 Bags & Items & Cardins	477	85
NEW YORK STATE SALES TAX	tax exempt	
Total	$ 477	85

PAID

BEST COPY AVAILABLE

FLOTA MERCANTE GRANCOLOMBIANA, S. A.

Principal Office — BOGOTA, COLOMBIA, SOUTH AMERICA

DELIVERING CARRIER TO STEAMER | CAR No.—REFERENCE

FORWARDING AGENT'S REFERENCES (This space is NOT part of the Bill of Lading) HERMANN SCHUTTE CIA LTDA. CARTAGENA EXP-10644 | EXPORT DEC. NO.

BILL OF LADING

(Terms continued from reverse side hereof)

SHIPPER EXPORTADORA ANDINA LTDA. CARTAGENA

CONSIGNEE ORDER OF: VANA TRADING COMPANY INC. 150 BROADWAY NEW YORK

ADDRESS ARRIVAL NOTICE TO: Same

ALSO NOTIFY: "PAGADO EL IMPUESTO DE TIMBRE"

VESSEL METTE SKOU FLAG DANESA

PIER V-#6. PORT OF LOADING CARTAGENA

PORT OF DISCHARGE (Where goods are to be delivered to Consignee or on-carrier) NEW YORK

FOR TRANSSHIPMENT TO (If goods are to be transshipped at port of discharge)

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	KILOS	GROSS WEIGHT IN POUNDS
MADE IN COLOMBIA PRODUCT OF: COLOMBIA.	5.000	CARTONS YARN	130.000	275.575
		FREIGHT COLLECT		
		ORIGINAL		
		REGISTRO DE EXPORTACION NO. 00448 C/gena Junio 17/74.		

FLOTA
Deft. Exh. For ID .....
Pl. Exh. In EV .....
Charles Shapiro 2/27/76
Doyle Reporting Inc. CA

ROBERTA LERCH, CSR
Plts. EXH. 3
Deft.
Date 8/13/75

Those commodities licensed by U.S. for ultimate destination, Diversion contrary to U.S. Law prohibited. (Leave blank if using other prescribed clauses.)

The undersigned hereby certifies that it is operating under license No. _____ issued by the Federal Maritime Commission, and has performed in addition to the solicitation and securing of the cargo for the ship or the booking of, or otherwise arranging for space for such cargo, two or more of the following services: (Check services performed.)

- (1) The coordination of the movement of the cargo to shipside;
- (2) The preparation and processing of the ocean bill of lading;
- (3) The preparation and processing of dock receipts or delivery order;
- (4) The preparation and processing of consular documents or export declarations;
- (5) The payment of the ocean freight charges on the cargo.

(Name of Freight Forwarder)

By _____

FLOTA MERCANTE GRANCOLOMBIANA, S. A.
Grancolombiana (New York), Inc., General Agent
For and on Behalf of the Master

IN WITNESS WHEREOF, 3 Bills of Lading have been signed of this tenor and date, one of which being accomplished, the others shall be void.

Dated at CARTAGENA, COLOMBIA.

19th, JUNE Date 1.974

B/L No. 1

FLOTA MERCANTE GRANCOLOMBIANA S.A.

By _____

MEASUREMENTS	WEIGHT	RATE	STEAMSHIP FREIGHT
275.575 Lbs.		US$1.20	66.553.50
R.F.	K-2000	" 1.00	127.
n	K-	" 1.50	165.24
L.C.	K-	" 6.00	767.25

PLAINTIFF'S EXHIBIT 6.

U. S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

B- 10227
10227

COLOMBIA

INSPECTION CERTIFICATE

This certificate is issued in compliance with the regulations of the Secretary of Agriculture governing the inspection of various products pursuant to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and is admissible as prima facie evidence in all courts of the United States. *WARNING: Any person who knowingly shall falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any such actions, is subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both.*

NAME AND ADDRESS OF APPLICANT		MARKET
Vana Trading Co. Inc.	New York, N. Y.	Brooklyn, N. Y.
NAME AND ADDRESS OF SHIPPER		**INSPECTION POINT**
Unknown	Colombia	Military Terminal Pier 3
NAME AND ADDRESS OF RECEIVER		**TIME OF INSPECTION**
Vana Trading Co. Inc.	New York, N. Y.	DATE: July 2, 1974 / HOUR: 3:00 PM

CARRIER: ☐ CAR ☐ TRUCK ☐ TRAILER ☐ SHIP — INITIAL AND NO.: See Remarks

TEMPERATURE OF PRODUCT: Range 80 to 100 °F — AMOUNT OF ICE OR TYPE OF REFRIGERATION: ///

LOADING: Stacked at above location.

PRODUCT	CONTAINER MARKINGS	NO. & TYPE OF CONTAINERS	~~GRADE~~
YAMS "Andino, 50/55 Product of Colombia, New York, N. Y."	Libras, Name, Super Seleccionado, Vana Trading Co., Inc., Broadway,		PEG.
Applicant states:	5000 cartons		

~~PACK~~

~~SIZE~~

~~AVERAGE~~ AND CONDITION Firm. 2 to 26%, average 9% drytype Fusarium Rot. No soft rot. All tubers have sprouts from 1/4 to 1 1/2 inches in length.

BEST COPY AVAILABLE

REMARKS Applicant states stock unloaded from S/S Motte Skou under Bill of Lading

FEE 44.00 H.B.

EXPENSES _____

TOTAL _____

I, the undersigned, a duly authorized inspector of the United States Department of Agriculture, do hereby certify that at the request of the applicant and on the date indicated, samples of the above described products were inspected and the quality and/or condition as shown by said samples were as herein stated.

Robert R. Martin C. J. Cunillo Jr. Inspectors

Robert R. Martin, 28 A, Hunts Point Market, Bronx, NY
(INSPECTOR)

PLAINTIFF'S EXHIBIT 8.

TELEPHONE: (201) 332-8213 NIGHTS: 516 ANDREW 1-6187

STRUAN ROBERTSON
Master Mariner
Marine Cargo Surveyor and Consultant
15 EXCHANGE PLACE
JERSEY CITY, N. J. 07302

SURVEY REPORT

File #105-74/C September 24, 1974

Examined at the request of Grancolombiana (New York) Inc.

For the account of whom it may concern

MV "METTE SKOU" Voy. #8 N.

Arrived New York - July 1, 1974

- -

B/L: Cartagena/N.Y. #1

CONSIGNEE: Vana Trading Co.

SHIPMENT: 5,000 cartons of Colombian Yams

MARKS: ANDINO
NAME - SUPER - SELECCIONADO
PRODUCT OF COLOMBIA
IMPORTED & DIST. BY: VANA TRADING CO.

- -

THIS IS TO CERTIFY that we, the undersigned surveyors, did, at the request of Grancolombiana (New York) Inc., 1 World Trade Center, New York, N.Y., attend at the consignee's premises, Store #3, Bronx Terminal Market and American Banana Co. Warehouse, Pier 2, Harlem River, Bronx, N.Y. on July 9, 1974 and at the consignee's warehouse, 33 Stone St., Brooklyn, N.Y. on July 15, 1974, to examine the captioned shipment for alleged damage and have to report as follows:

JOINT SURVEY

Joint surveys were held with Mr. James McCabe, McCabe Inspection Service, Inc., Fruit and Vegetable Inspectors, representing the consignee.

We were advised that the shipment was not insured.

PACKING

Double-wall corrugated cardboard cartons measuring 9½"x 17"x 20" with slip-over tops. There were hand holes about 1"x 4" cut in each end and a ½"x 4" space between the flaps at the tops and some cartons had four 1" diameter holes in each side for ventilation.

The Yams were of various sizes and they were individually wrapped in white paper.

PLAINTIFF'S EXHIBIT 8

DESCRIPTION OF DAMAGE

The cartons in the consignee's premises and at American Banana Co. Warehouse, located nearby, were stacked in various locations and, while an accurate count was not possible, we estimated there were about 1450 cartons at these premises. We were advised that about 500 of these had been rejected and returned by customers.

According to the consignee, approximately 300 other cartons which had been rejected by customers were presently on trucks and were being returned to the warehouse. These cartons were not sighted by us.

Inspection of the cartons revealed them to be variously crushed, some badly and a few were torn with contents exposed or partly adrift.

A few cartons here and there were stained and moldy on the bottoms by seepage from decayed contents. The percentage of cartons so affected was estimated to be 5% or less of those that were seen.

The contents of cartons opened for examination were sprouting, some had sprouts up to 3" in length, and the Yams were variously soft and decayed, some overall and some in spots.

Those in the centers of the cartons were the most seriously affected; many were soft and moist and completely deteriorated, while those at the tops and adjacent to the sides or ends of the cartons were decayed on the ends or in spots on the sides. This pattern was more or less constant throughout and, while the condition varied slightly from carton to carton, all the Yams in cartons examined throughout the stacks were affected to some degree.

A comparison of the Yams in cartons with ventilation holes in the sides and those without revealed no difference in their condition.

According to the consignee 2,956 cartons had been delivered to his warehouse in Brooklyn and these were inspected on July 15th.

At Brooklyn the cartons were stacked 8-9 tiers high in one large pile and occupied about one-half the floor space in the small one story building and, while an accurate count was not possible, a rough tally indicated that the consignee's figure of 2,956 cartons was more or less correct.

We understand that the Yams had been delivered to the warehouse after fumigation and they apparently had been in the warehouse for some time at the time of our inspection. The weather during the period from July 3 to July 15 was very warm, rising to 90° F. or more on several days, and the exposure to the high temperatures was reflected in the condition of the cargo.

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The air temperature in the warehouse was 90° F. and the pulp temperature of the Yams was the same. The stench of decay was prevalent throughout the warehouse and there was an abundance of flies and other insects about the area.

Most of the cartons were variously crushed, some were torn and a large number were wet and stained by liquid oozing from decayed contents.

The Yams in cartons selected at random from throughout the stack and opened for examination were sprouting, some had sprouts up to 6" in length protruding through the tops and they were soft, moist and mushy. The pattern was more or less similar in each carton and while a few Yams were found here and there with only spot decay, most of them, an estimated 90% in cartons examined, were badly deteriorated.

DISPOSITION

In addition to the approximately 4,400 cartons we saw and the ones on trucks being returned after rejection by customers, another lot of 251 cartons had been sold and no complaint had been received from the customer at the time of our survey July 15. The consignee anticipated that there would be a complaint and would advise us so that we could arrange to examine the cartons but we heard nothing further and we assume that the 251 cartons were accepted as sound.

The Yams in the Brooklyn warehouse were damaged to the extent that they were considered to have no value and it was agreed that they should be dumped.

The Yams in the consignee's premises and at the American Banana Co. were not so seriously damaged; a large portion had only spot decay, and it was thought they might have some value if sold to customers at a discount but the consignee stated that he had already attempted this and the customers that he had spoken to had refused to buy the Yams at any price.

The question of sorting the Yams was discussed and the consignee agreed to sort a few cartons on a trial basis but he later advised us that no Yams were found which were considered suitable for sale and further sorting was not worthwhile.

We also discussed the possibility of selling the Yams for use as a frozen food product but we understand that firms who make this product use machines to cut and package it and because of this only sound Yams are acceptable.

It is our understanding that, except for the 251 cartons, all of the Yams were eventually dumped. The consignee was requested to obtain receipts from whoever dumped the Yams and to provide us with copies of same but we have not received the copies to date and we have not received any further information regarding the shipment.

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According to the consignee the Sound Market Value of the Yams was $17.00 per carton. A large board quoting the wholesale prices of various commodities at American Banana Co. gave the price of Colombian Yams as $15.50 per carton at the time of our survey on July 9th.

CAUSE OF DAMAGE

We were in attendance during discharge, see our Survey Report File #102-74/C dated July 15, 1974, at which time this shipment was sighted in #3 Deep Tanks where they were stowed up to 13 tiers high together with two (2) other shipments of cartons of Yams, one (1) of 1,000 cartons marked MARICHAL AGOSTO and another of 500 cartons marked D'ASTE CO. These 2 shipments were stowed mostly in top tiers.

Ground tiers were on plywood and plywood platforms had been laid between every 3rd tier. The cartons had been set out 8" to 9" from the tank sides all around and there were air channels 6" to 10" wide through the stows both fore and aft and athwartships for ventilation purposes.

Manhole covers located immediately abaft the tank lids were open and the 6" service pipes at the sides leading to the Main Deck were not plugged.

The tank lids were removed July 1st but discharge of the Yams did not start until 0800 hours on July 2nd at which time we conducted our initial inspection. The air temperature at the time was 73° F. and the temperature in the tanks was the same but the air in the tanks was more humid and there was an odor of decay.

The pulp temperatures of cartons checked in top tiers were: Min. 74° F., Max. 80° F. and, while the Yams in some cartons were warm to the touch, we sighted no evidence of decay.

The cartons were discharged in rope nets and this resulted in many cartons being crushed and torn. We protested this manner of discharge but for reasons explained in our General Survey Report nothing was done.

While the use of nets caused unsightly conditions and accounts for the many crushed and torn cartons sighted during our subsequent surveys, it appeared to have caused little if any damage to the contents and was not a cause of complaint.

As discharge progressed we noted that there were more stained cartons and inspection of the contents of some cartons 4 and 5 tiers into the stow revealed the Yams to be slightly shrivelled and some were moist and spotted with soft decay. These conditions appeared to become progressively worse and the Yams in cartons examined from lower tiers were damp and heated with a high percentage of deterioration.

The pattern of damage in stow indicated a condition caused by cargo heat due to inadequate ventilation. There was little damage to the Yams stowed in the top tiers because they apparently

PLAINTIFF'S EXHIBIT 8

had received some ventilation from the manholes and service pipes but the air was not of sufficient force to reach the lower parts of the stows and thus heating occurred with consequent deterioration and the condition reached its most advanced stages in cartons stowed in or near the bottoms of the tanks.

The plywood walkboard platforms were also a factor in the damage. While the platforms provide excellent working surfaces and reduce crushing, in this instance they impeded air penetration and blocked the flow of gases and heat from the cargo.

The weather conditions that prevailed during and after discharge probably accelerated the deterioration but can not be considered a primary source of damage. Yams are normally carried from South America in open stow during warm weather months without any undue affect and we understand that they are occasionally stored for long periods in unrefrigerated warehouses before shipment.

T is report is issued without prejudice to the rights of whom it may concern.

STRUAN ROBERTSON

MS

PLAINTIFF'S EXHIBIT 9.

TELEPHONE: (201) 332-8213 NIGHTS: 516 ANDREW 1-6187

STRUAN ROBERTSON
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Marine Cargo Surveyor and Consultant
15 EXCHANGE PLACE
JERSEY CITY, N. J. 07302

SURVEY REPORT

File #102-74/C July 15, 1974

Examined at the request of Grancolombiana (New York) Inc.

For the account of whom it may concern

Inspection of Stowage and Discharge of Cargo

MV "METTE SKOU"

Arrived New York - July 1, 1974

Vessel berthed at Pier 3, Army Base, foot of 58th St. Brooklyn, N.Y.

Commenced discharge of cargo at 0800 hours on July 1, 1974
Completed " " " " 1900 " " " 3, "

Weather during discharge:
July 1, 1974 - Occasionally cloudy but dry.
Air temp. 64° F. to 83° F.
" 2, " - Hot, humid and dry.
Air temp. 68° F. to 90° F.
" 3, " - Hot, humid and dry.
Air temp. 75° F. to 90° F.

THIS IS TO CERTIFY that we, the undersigned surveyors, did, at the request of Grancolombiana (New York) Inc., 1 World Trade Center, New York, N.Y., attend on board the captioned vessel at Pier 3, Army Base, foot of 58th St., Brooklyn, N.Y. on July 1, 2 and 3, 1974, to inspect the stowage and discharge of cargo and have to report as follows:

The hatches were found to be in good order and condition, each fitted with steel pontoons covered with tarpaulins of suitable quality, entirely satisfactory for the purpose intended, and with cargo gear to facilitate discharge, suitable and well maintained.

The cargo compartments appeared to have been judiciously ventilated during the voyage, the ventilators being of a type, number and size to permit of this procedure, and we found no evidence of steamer sweat.

Each compartment was fitted with side battens and/or spar ceiling, the majority of which were in place and in apparent good order and condition

The cargo was distributed, stowed and dunnaged as described hereinafter.

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We were advised by the Chief Officer that good weather had been experienced at the loading ports and that the sea passage had been prosecuted under normal conditions, without incident, except as noted hereunder:

At Buenaventura: June 11 to June 16, 1974	Rain showers each day during loading, occasionally heavy. Work stopped and hatches closed many times because of rain. We were advised that because of the frequent showers some bags of Coffee Beans were wet when loaded and some were stained by contact with dirty, wet dock area.
At Sea: June 21, 1974) " 22, ")	Wind NE, force 6-7. Rough sea. Vessel pitching and rolling moderately to heavily at times.
At Jacksonville: June 23, 1974) " 24, ")	Occasional rain showers. Hatches closed during periods of heavy rain.
" 26, "	Heavy rain at 0940 hours. Hatches closed for the day. Some cargo wet before hatches could be closed.

The vessel had discharged cargo at Wilmington in dry weather.

STOWAGE ARRANGEMENT

#1 Shelter Deck	A few cases General Cargo marked PUSAN KOREA, and various, were stowed 1 high forward. The underdeck aft space was floored off with bales of Cotton Piece Goods marked ECHALVA/ BALTIMORE, stowed 1 high on plywood. The remaining space was empty.
#1 'Tween Deck	Flooring off the after 7'-8' of the hatchway and wings abreast and underdeck aft were bales of Tobacco marked T C 29-353, stowed 3-4 tiers high on plywood laid over paper and canvas. The hatch boards were well covered with canvas, paper and plywood. The remaining space was empty.
#1 Lower Hold	Floored off from 1'-2' abaft the forward bulkhead to 1'-2' forward of the after bulkhead with bags of Coffee Beans stowed 13-14 tiers high on paper laid over plywood. The sides were lined with paper in way of bags. Chops sighted were: 2103 - 2476 - 2505 2104 - 2480 - 2509 2107 - 2503 - 2510 2475 - 2504 - 7127

PLAINTIFF'S EXHIBIT 9

#2 'Tween Deck — Empty.

#2 Lower Hold (Common with #3 Lower Hold) — One (1) empty 20' container was stowed in the forward hatchway.
Flooring off from about 3/4 hatch into #3 Lower Hold were bales of Cotton Piece Goods for St. Johns stowed 5-6 tiers high. Overstowing the bales and flooring off forward of them to about ⅔ hatch were bags of Coffee Beans stowed 7-8 high over the bales and 14-15 high elsewhere. Ground tiers were on paper laid over plywood and the sides were lined with paper in way of bags. Chops sighted were:

415	1546	6167	6201
0707	2687	6170	6202
0709	2688	6171	6203
0716	3485	6173	6204
1168	4177	6183	

#3 'Tween Deck — Empty containers were stowed in the hatchway and forward ⅔ wings.
Flooring off the after ⅓ wings abreast the hatchway were bags of Coffee Beans stowed 10-11 tiers high on paper laid over plywood, the sides were lined with paper in way of bags. Chops sighted were: 0718, 1125, 4176 and 4177.
The underdeck aft space was floored off with cartons of Yarn for St. Johns. Some cartons, also some bags of Coffee Beans in ground tiers had been wet by rain at Jacksonville. For further details see list of exceptions. The remaining space was empty.

#3 Lower Hold (Common with #2 Lower Hold) — Flooring through from #2 Lower Hold to about ⅓ #3 Hatchway were bales of Cotton Piece Goods for St. Johns stowed 5-6 tiers high. Overstowing the bales and flooring off the remaining space were bags of Coffee Beans stowed 7-8 high over the bales and 14-15 high elsewhere. Ground tiers were on paper laid over plywood and the sides were lined with paper in way of bags. Chops sighted were:

0714	1089A	2478	4179
0715	1129	2479	6204
0717	1143	3487	7102
0718	2105	3488	9038
1089	2477	3490	9039

#3 Deep Tanks — Both tanks were floored off with cartons of Yams marked MARICHAL AGOSTO, ANDINO and D'ASTE CO, stowed 10-13 tiers high on plywood with plywood platforms between every 3rd tier. The cartons were set out about 8"/9" from the tank sides all around and there were air channels both fore and aft

PLAINTIFF'S EXHIBIT 9

#3 Deep Tanks (cont.) and athwartships, each 6" to 10" wide, through the stows for ventilation purposes. The tank manhole covers in the 'Tween Deck had been left open, also further ventilation was provided through the 6" service pipes which extend at the sides to the Main Deck. For details regarding the condition of this cargo see list of exceptions.

#4 'Tween Deck Flooring off forward on either side of the engine room projection were bags of Coffee Beans stowed 9-10 tiers high on paper laid over plywood. The sides and bulkheads were lined with paper in way of bags. Chops sighted were: 415, 1180 and 8242. Empty containers were stowed in the hatchway. The remaining space was empty.

#4 Lower Hold Flooring off from 1'-2' abaft the forward bulkhead to about # hatch were bags of Coffee Beans stowed 12-13 tiers high forward and 8-9 high elsewhere. Ground tiers were on paper laid over plywood and the sides and shaft tunnel were lined with paper in way of bags. Chops sighted were:

0710 - 4175
0712 - 7094
0713 - 7096
1154 - 7111
1166 - 7113
2106 - 7125

The remaining space was empty.

#5 'Tween Deck Empty.

#5 Lower Hold Floored off from 1'-2' abaft the forward bulkhead to 1'-2' forward of the after bulkhead with bags of Coffee Beans stowed 13-14 tiers high or to near beams on paper laid over plywood. The sides were lined with paper in way of bags. Chops sighted were:

414 - 1167 - 2508 - 7110
1121 - 1179 - 3063
1123 - 2506 - 4175
1160 - 2507 - 4178

EXCEPTIONS

The following exceptions were noted during the course of discharge:

Yams

MARICHAL AGOSTO)
D'ASTE CO) Cartons of the customary type with contents individually paper wrapped.
ANDINO)

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PLAINTIFF'S EXHIBIT 9

Yams (cont.)

Many cartons were crushed and torn during discharge, some badly with contents exposed and/or partly adrift. This damage occurred as the result of discharging the cartons in rope nets. We protested this manner of discharge and recommended that pallets or "Pie Plates" be used and we were initially advised that this would be done but when we returned to the pier later the nets were still being used. Apparently "Pie Plates" were not available and we understand that Safety Inspectors rejected the use of pallets.

No. 3 after derricks are located near the winches and close to the after coaming. The Deep Tanks are in the after hatchway and in order to lift cargo from them the derricks have to be rigged at a sharp angle, nearly vertical, and drafts slung from the tanks to the dock pass over the winchman's head. Apparently this was considered hazardous and, according to pier officials, the reason pallets could not be used.

The contents of cartons examined were sprouting, some had heavy sprouts. Pulp temperatures checked in stow at the start of discharge were: Min. 74° F., Max. 80° F.

There was a moderate percentage of field bruises and mold spots, mostly old, and some Yams had the paper wrappers sticking to them and some were slightly soft and shrivelled.

The contents of some cartons later examined on the dock, which were stowed in bottom tiers of the tanks, were found to be moist, heated with a high percentage of soft decay.

The Yams were discharged July 2nd and 3rd, 1974 and the air temperatures during this period were high, reaching 90° F. during the afternoons.

The tank lids were removed July 1st and the air temperature in the tanks at the time of our inspection on July 2nd was 73° F., more or less the same as that in other compartments, but we noted that the air in the tanks was more humid than on deck and there was a moderate odor of decay.

The presence of moistness and soft decay in some cartons appeared to be the result of heating probably caused by inadequate ventilation in stow.

There were complaints from the Importer of the cartons marked ANDINO (Vana Trading Co) in respect to the condition of this shipment and the Yams were examined on the pier and, apparently in stow, by Mr. James McCabe, Fruit & Vegetable Inspector, on behalf of the Importer.

A joint survey has been arranged with Mr. McCabe and details of our findings will be given in a later report.

PLAINTIFF'S EXHIBIT 9

Yarn

R K M/ST. JOHNS — Many cartons damp and water stained and some disintegrated with contents adrift. The cartons were wet by rain during discharge at Jacksonville. The damaged cartons were re-packed and recoopered by the crew during discharge at New York. Sighted in #3 'Tween Deck.

Tobacco

T C 29-353 — Some bales, mixed in stow, with old, dried water stains. We were advised by the Chief Officer that exceptions were taken at time of loading in respect to some bales being stained. Sighted in #1 Shelter Deck.

Coffee Beans

CHOP	# BAGS	EXCEPTION	WHERE SIGHTED
7127	2	Torn in slings during discharge, part spilled.	#1 L.H.
2503	1	Torn in slings during discharge, heavy spillage.	"
2475	1	Dry water stained. "Country stains".	"
6203	4	Heavily dry water stained. Old condition.	#2 L.H.
6183	4	-------- do --------	"
6171	8	Heavily dry water stained. Rain at Jacksonville.	"
1168	10	-------- do --------	"
4177 —	Some	Smudged by marking ink.	"
3485	"	-------- do --------	"
6112	1	Torn by contact with coaming during discharge, heavy spillage.	"
4176 —	Some	In ground tier in after port wing, water stained by rain at Jacksonville.	#3 T.D.
1125	5	Dirt smudged on one end.	"
3490	Some	3 sighted stained by yellow colored substance on ends. Mixed in stow indicating the stained bags were loaded in this condition.	#3 L.H.

PLAINTIFF'S EXHIBIT 9

File #102-74/C -7- MV "METTE SKOU"

Coffee Beans (cont.)

CHOP	#BAGS	EXCEPTION	WHERE SIGHTED
0718	1	Torn by hatch beam when hatch was opened, spilling.	#3 L.H.
	8	Soiled by debris through hatch boards.	"
0712	2	Dry water stained. "Country stains".	#4 L.H.
7125	9	Soiled by debris through hatch boards.	"
7096	2	Dry water stained. "Country stains".	"
	1	Torn by dragging during discharge, spilling.	"
4178	1	Torn in sling during discharge, spilling.	#5 L.H.
	1	Old, dry water stain.	"
2506	1	Torn during discharge, spilling.	"
1167	24	Dry water stained, most heavily. The wetting was not recent and possibly occurred during loading at Jacksonville.	On Pier

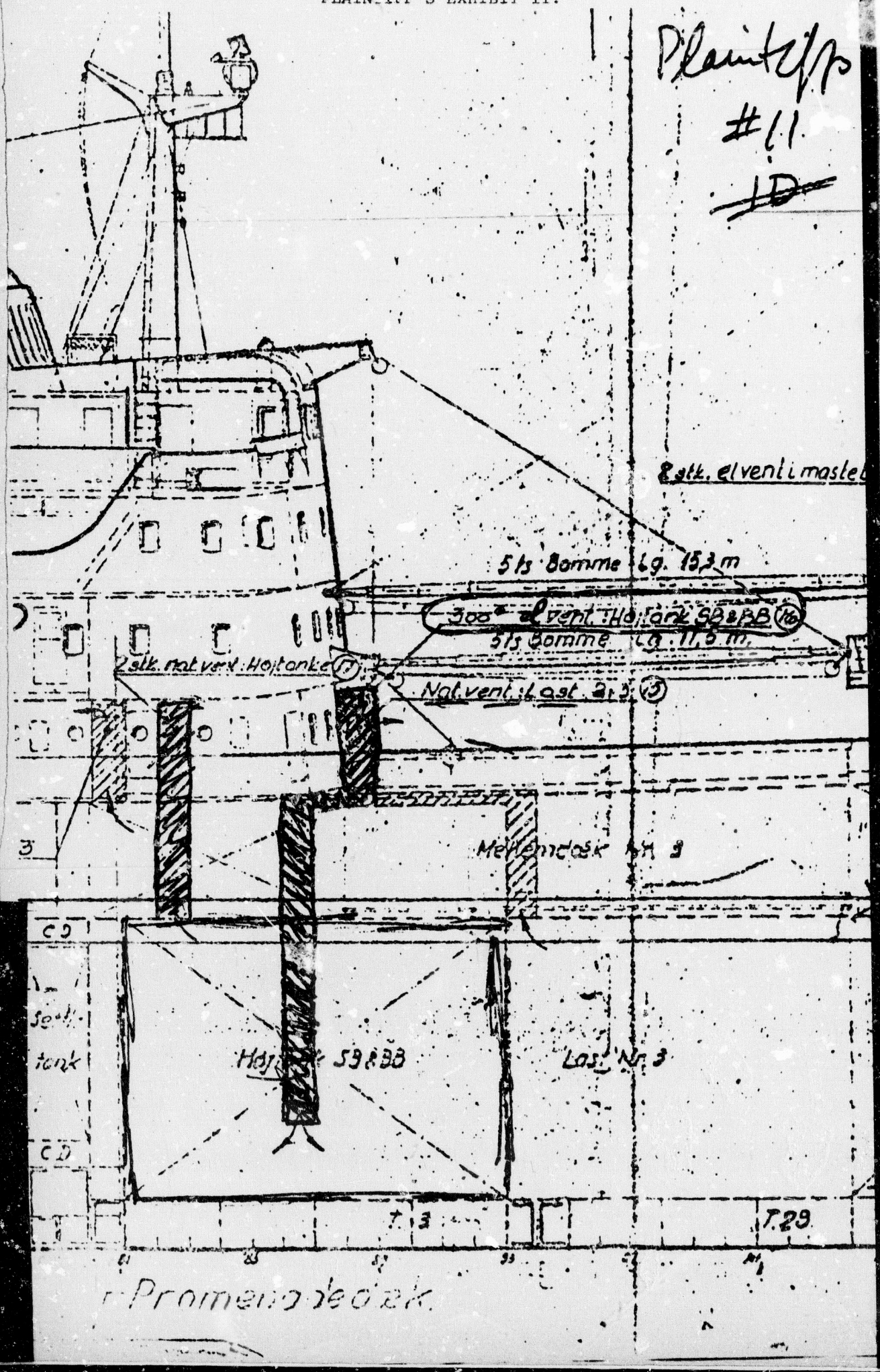
WE DO HEREBY CERTIFY that, with the foregoing exceptions, the cargo discharged at New York was, to the best of our knowledge and belief, so discharged in good order and condition.

Struan Robertson

STRUAN ROBERTSON

MS

PLAINTIFF'S EXHIBIT 11.



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PLAINTIFF'S EXHIBIT 13.

PL13

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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VANA TRADING CO., INC. :

Plaintiff, :

-against- : 75 Civ. 1278 (MP)

The SS METTE SKOU, her engines, boilers, etc., and FLOTA MERCANTE GRANCOLOMBIANA, S.A., :

Defendants and Third-Party Plaintiffs, :

-against- :

OVE SKOU, :

Third-Party Defendant. :

----------x

Deposition of EXPORTADORA ANDINA LTDA., by ARTURO MEJIA DIAZ, taken by plaintiff pursuant to notice dated 8/7/75, at the offices of Purrington & McConnell, 40 Wall Street, New York, New York 10005, on August 13, 1975, at 10:00 a.m., before Roberta Lerch, a Certified Shorthand Reporter and Notary Public of the State of New York

Commerce Reporting Company, Inc.
Forty One East Forty Second Street
New York, New York 10017
CERTIFIED SHORTHAND REPORTERS (212) MU 2-7790 A COMPLETE REPORTING SERVICE SINCE 1935

PLAINTIFF'S EXHIBIT 13

APPEARANCES:

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Attorneys for third-party defendant
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New York, New York 10004
BY: CHESTER D. HOOPER, ESQ.
VINCENT M. DE ORCHIS, ESQ.
Of Counsel

ALSO PRESENT:

LOUIS SOUSA

o0o

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties herein that the signing, sealing and filing of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

PLAINTIFF'S EXHIBIT 13

A R T U R O M E J I A D I A Z, being first duly sworn by the Notary Public (Roberta Lerch), and stating his residence address as Edificio Seguros Bolivar, Apartment 306, Cartagana, Colombia, testified as follows:

EXAMINATION BY:

MR. MC CONNELL:

Q Would you state your full name?

A Arturo Mejia Diaz.

Q And your home address?

A Edificio Seguros Bolivar, Apartment 306, Cartagena, Colombia.

Q What is your business?

A Export yams.

Q By whom are you employed?

A Exportadora Andina Ltda.

Q What is the business of Exportadora?

A Grow yam and export yam.

Q And what is your title in the organization?

A General manager.

Q Is there a president?

A General manager in Colombia is like a president.

Q What was the business of Exportadora Andina in June of 1974?

Commercial Reporting Company Inc

they operate those businesses.

Q How many brothers do you have altogether?

A Nine brothers--eight brothers and one sister.

Q Do you personally, or does Exportadora Andina, have any interest in any other companies?

A No, sir.

Q When did you arrive in New York City for this trip?

A Last Sunday.

Q August 10. When are you leaving?

A I expect to leave today.

Q And where are you going?

A Miami.

Q And from Miami where are you going?

A Cartagena.

Q Do you know when you are going back to Cartagena?

A I'm planning to stay in Cartagena next Saturday.

Q Do you recollect making a shipment of yams on the SS METTE SKOU in June of 1974?

A I do.

Q To whom did you make that shipment?

A Vana Trading Company, Incorporated of New York.

Q What size shipment was it?

A Five thousand cartons of yam.

Q Had you received an order for those yams?

A I received an order from Mr. Lou Sousa.

Q Who is Mr. Sousa?

A Mr. Sousa is the president Vana Trading.

Q Was an invoice issued for the shipment?

A Yes, sir.

Q I would like to show you a document and ask you if you would identify it.

A This is the invoice that covered the 5,000 cartons of yam. Here is my signature and the stamp of my company.

MR. MC CONNELL: I would like to ask that this document be marked as Plaintiff's Exhibit 1 for identification.

(Invoice marked Plaintiff's Exhibit 1 for identification, as of this date.)

BY MR. MC CONNELL:

Q I notice that the invoice which is Plaintiff's Exhibit 1 for identification has the word "Telefonicamente" in the upper right-hand corner. What does that indicate?

A That mean I receive the order by phone.

Q What were the terms of sale for this shipment?

A FOB Cartagena, Colombia.

Q And the price?

A Five dollar for each carton of 25 kilos each.

Q Can you recall when the order was placed with you by Vana Trading Company?

A Early in June.

Q Of 1974?

A 1974, yes.

Q Had you done business before with Vana Trading Company?

A Yes, I did.

Q For how long?

A Four years.

Q Had you spoken with Mr. Sousa before in person?

A Yes, sir, I do.

Q And by telephone?

A Many times.

Q So you recognized his voice?

A Yes, sir, I do.

Q Were these yams paid for?

A Yes, sir. I get paid through my bank.

Q I notice on the invoice it says "Carta de Credito" in the upper right-hand corner. What does that indicate?

A Letter of credit.

A 35 kilos. I know some like this. (Indicating)

Q What type of yam was it that you exported on the METTE SKOU?

A The Criollo, Babosa.

Q Would you describe the Criollo or Babosa yam?

A It's a yam that has a weight between two and a half to six and a half pounds. It has a beautiful form, you know. No holes, intact. It has to be fresh and perfect to export. And it's a very hard yam.

Q What is its color?

A Dark.

Q And when it is cut, what is the color inside?

A White.

Q Senor Mejia, I would like to ask you to take this piece of paper and if you would just give us an outline of, let's say, a five-pound Criollo yam, the size, just so we can get an idea of the size.

(Witness complies)

MR. MC CONNELL: I would like to ask that this diagram be marked as Plaintiff's Exhibit 2 for identification.

MR. GIALLORENZI: Is that the actual size of the yam, or is that drawn to scale? That's the actual size of the yam?

A 1,650,000 kilos.

Q 1,650,000 kilos?

A Kilo, yes.

Q Is that total or yams which were exported?

A Total.

Q Is that total of the farm or just the yams exported?

A Total of the farm.

Q How many cartons is that of 25 kilos each?

A It's about 66,000 cartons of 25 kilos.

Q And for the year 1974, how many cartons of yams did Exportadora Andina export?

A Between 75 to 60,000 cartons.

Q Now, with respect to these particular yams, were they grown on your farm?

A This particular--

Q The yams which are exported on the METTE SKOU, these 5,000 cartons.

A Well, I remember, you know, that we make--days before a shipment of 5,000 cartons in the vessel FELIPE of Grancolombiana, and there was a couple, maybe three or four thousand cartons left in our warehouse. Then when I receive the order for the 5,000 cartons in the METTE SKOU from Mr. Sousa, I get in contact with the

PLAINTIFF'S EXHIBIT 13
Maria Diaz 13

A We prepared the land with equipment and we make some mountains.

Q Mounds?

A Mounds, yes, small. Then we take the yam, we cut it and put it into the earth.

Q You put a piece of yam into the mound?

A Into the mound, yes. Near the mounds, about five inch near, we plant corn.

Q What's the purpose of planting the corn in the mound with the yam?

A Because the yam need support to grow. The plant of the yam need support to grow.

Q The plant of the yam?

A Yes.

Q Needs something to twine around as it grows?

A Right.

Q When are the yams planted? When are the seed yams planted?

A Generally, in the rainy season, which start in April.

Q How long does the yam take to mature?

A Eight and a half to nine months.

Q Can you describe how the yams are harvested?

A Yes, sir. My men, one by one, they have a stick

of lumber, a branch of the tree, a stick, and they go like this (indicating).

MR. MC CONNELL: Indicating a digging motion.

A They take out like this (indicating). Then they get a yam, do it like this and put in baskets.

Q When you say "do like this"--

A Rub the yam.

Q They rub the yam. Why do they rub it?

A To take the earth out.

Q And then what do they do with the yam?

A They take--when they fill the basket, they take it to a place we have on the farm, a small place, and they pile in there.

Q How long do the yams remain there at this place?

A Seven, eight hours.

Q When you say "place," what do you mean?

A Well, it's like a shed.

Q A shed?

A Shed, yes.

Q And then what happens to the yams at that point?

A At that point, then we bring the trucks. When we have enough yam to take from the farm to the packing plant and then the men start to select the yam

that is good for exportation in the farm. They say the small yam is no good, and they leave it there.

The one that has a hole is no good. They leave it there. Not well conformation, leave it there. It has to be perfect, you know, to take from the farm to the warehouses, to our warehouses.

Q How far is it from the farm to the warehouse?

A Four and a half hour.

Q Where is the warehouse located?

A Turbaco, Departmento Bolivar.

Q Would you describe your warehouse?

A We have four warehouses, similar all of them. It has ten meters in the front by ~~three~~ thirty meter long.

Q Do you own or rent the warehouses?

A We own the warehouses.

Q Do the warehouses have roofs?

A A roof, yes.

Q What does that mean?

A Coconut leaf.

Q What is the construction and the material of the walls?

A The walls are cement block.

Q What sort of ventilation do the warehouses have?

Q What do you do with them?

A For the farmer; we return to them. We do not save that.

Q Do you know what they are used for?

A They use that for internal consumption or they use for seed for a new crop.

Q Of your own knowledge, do you know how long yams of the Criollo variety can be warehoused?

A Up to eight to ten months.

Q Previously, you mentioned that the yam matures in eight and a half to nine months.

A Right, sir.

Q Are yams harvested immediately upon reaching their maturity?

A Some people leave the yam in the earth for two, a month and a half, two months, two and a half months to get a better price when the yam or the crop is finished, you know.

Q When would you expect that all the yams would have been harvested for, let's say, the year 1974? By what date?

A Exact date?

Q Approximately.

A Latest March.

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Mejia Diaz 22

A O.K.

We put our man--

Q Were they stored in the warehouse?

A On the floor, in piles.

Q Is that the normal, customary way of storing them?

A Normal, customary, yes.

Q When did you commence packing these yams for export?

A Early June, too, because, you know, we have to--as soon as the yam come, we start to pack.

Q As soon as these yams arrived at your warehouse you started to pack them?

A To pack them, you know. Before the packing, we check that the yam is in--

Q Wait a minute. Let's take it one step at a time. How long did it take you to pack these 5,000 cartons?

A Five, six days, seven days.

Q Do you recollect when the packing process was completed for these 5,000 cartons of yams?

A This was around the 14 or 15 of June.

Q Would you describe the packing process?

A Yes, sir. You know, when we are packing, we are

in the warehouse, where we pack.

Then we see that the men follow our instructions of selection of the yams. They pick up the yam, one by one again, rub the yam, see if it's a strong yam, no holes, and have good conformation.

From the pile, they bring that to the table. We use two big tables in there, eight men at each table. Then the men bring the basket, again put the yam on the table one by one. They don't throw. They put it one by one.

Q They don't what?

A They don't throw the yam like that. They have to pick up and put it over here. Then the man who start to pack get the yam, rub again to take out the earth, you know, look again to see if it has any holes, is it in good condition, look fresh and then wrap.

Q What do you mean by "wrap"?

A They wrap with newspaper, nonprinted.

Q They wrap it in paper that is--

A White paper.

Q Like newspaper but without printing on it?

A Like newspaper without printing, yes.

Q Are they wrapped loosely or tightly?

A Loosely.

PLAINTIFF'S EXHIBIT 13
Mejia Diaz

Q What happens to the yam then?

A Then they start to put the yam in a corrugated carton box that we use. The carton is 25 kilos net and is made by Carton de Colombia, S.A. in Cartagena. The company is a division of the Container Corporation of the United States. It's a carton that is strong.

Q What is the reason for wrapping the yam in the paper?

A To avoid the yam one to another--how do you call that?

MR. GIALLORENZI: Chafe.

Q Don't rub or chafe against the other yams?

A Yes, sir.

Q Where were you during the packing procedure for these 5,000 cartons of yams?

A Most of the time in the packing plant.

Q And what were your duties?

A I supervise, you know, the men to see that they follow our instruction, checking that they have to pack a yam that is good for export.

Q With respect to these yams, would you describe their condition as you saw them?

A Fresh and good configuration, no holes.

Q How about their size?

Q Are these trucks that you own?

A No, sir, rented.

Q How many cartons were taken on each day to the pier?

A If you use five trucks, you put 6,000 carton. If you use two trucks, you put 2,000 cartons. It depends on the capacity of the truck.

Q In this particular shipment, over what period of days were the yams delivered to the pier?

A It took about--because we were waiting that the farmer bring me the yam that I buy from them, it took about eight days to put on the pier the whole cargo.

Q Would you describe the cartons which were used?

A It's a corrugated carton, boxes of 25 kilos, each one.

Q You mentioned the maker before. Is there any ventilation in the box?

A Oh, yes.

Q Would you describe that?

A It has ventilation on the top of the box and ventilation to the handle.

Q To the handle holes?

A Handle holes, yes.

A All around the warehouse, yes.

Q Who owns that warehouse?

A The government.

Q Can you recollect when these yams were loaded aboard the METTE SKOU?

A The METTE SKOU? Between the 18 or the 19.

Q Of?

A June, 1974.

Q Is there any requirement for inspection by any government agency, any Colombia government agency, prior to export?

A There is a requirement. There has to be an inspection by the Instituto Colombia Agropecuario.

Q And the initials are ICA; is that correct?

A ICA, yes. They check the cargo, that it is in good condition.

Q How do they know when to make the inspection?

A It has to be before the ship sails.

Q How are they advised to make the inspection?

A Through the broker; when we make a shipment of yams, you know, I go with my partner--I go alone and from each pile I get one, two carton and check at the pier before the ship go.

Q You check the yams at the pier yourself?

PLAINTIFF'S EXHIBIT 13
Mejias Diaz 27

Q How large are those openings?

A The one on the top is about one inch wide and eight inch long and the other can be one and a half inch wide and six inch long.

Q How many people did you have working at your packing plant on this occasion?

A On this occasion was 40 person--not this occasion but all the time 40 person.

Q How far is it from the warehouses at Turbaco to the pier at Cartagena?

A Half hour.

Q Would you describe the place at the pier where the yams were taken?

A Yes. This is an almost new, big warehouse. Is about 250 or 300 feet long, 100 feet wide. In the front it has very good equipment to get the cargo.

They put the merchandise as soon as they receive it on pallets there, palletized, and it has very good ventilation. This warehouse has about 20 doors, like this.

Q 20 doors?

A Yes.

Q Around?

A All around, yes.

Q All around its insides?

A All around the warehouse, yes.

Q Who owns that warehouse?

A The government.

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A Through the broker; when we make a shipment of yams, you know, I go with my partner--I go alone and from each pile I get one, two carton and check at the pier before the ship go.

Q You check the yams at the pier yourself?

A Yes. I open a carton. Because the yam is with paper, I take out the paper. I see one or two yams, see if the yams are strong, clean and good, no holes, wrap, stick it in, put it in the carton again.

Q When was the last time you saw your yams?

A About a day and a half before the ship goes.

Q How would you describe their condition at that time?

A Looked fresh and good and no hole at all.

Q Did you give any instructions to the ocean carrier with respect to these yams?

A On these specific yams?

Q Yes, with respect to the shipment of them. Did you write any letters to Grancolombiana?

A Yes.

Q I would like to show you a document and ask if you would identify it.

A Yes, this is the letter, and here is my signature and the stamp of the company.

Q Is this a copy of a letter which you wrote to Grancolombiana at Cartagena?

A Yes, Grancolombiana office at Cartagena.

MR. MC CONNELL: I would like to ask that this letter be marked as Plaintiff's Exhibit 4 for

PLAINTIFF'S EXHIBIT 13
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identification, together with its translation, which is appended thereto, with a certificate of accuracy by the translator.

(Copy of letter from Senor Mejia Diaz to Grancolombiana at Cartagena together with certified translation marked Plaintiff's Exhibit 4 for identification, as of this date.)

BY MR. MC CONNELL:

Q How was this letter sent by you to Grancolombiana

A By messenger.

Q Did you obtain any acknowledgement with respect to its receipt?

A Yes, because here is the stamp of Grancolombiana that they received it.

Q Aside from this letter, did you have any other communications with Grancolombiana respecting the carriage of this shipment?

A No, sir.

Q Did you personally have any?

A Conversations?

Q Yes.

A With the Grancolombiana line?

Q Yes.

A With Mr. Padilla. He worked for Grancolombiana

in Cartagena.

Q And when did that take place?

A The day I send him the letter I told him please follow that instruction, you know, because that's the way my buyer request for the cargo.

Q Were you present at the pier when the yams were actually loaded aboard the vessel?

A No, sir, I was not there.

MR. MC CONNELL: That's all I have.

EXAMINATION BY
MR. GIALLORENZI:

Q Mr. Mejia, you stated on direct questioning by your lawyer that you had received an order for the 5,000 cartons of yams from Mr. Sousa in the early part of June.

A Right, sir.

Q 1974.

A Right, sir.

Q Can you fix the exact date when you were advised by Mr. Sousa that he wished to purchase 5,000 cartons of yams?

A Could be about the 2nd or 3rd of June.

Q Can you tell me the exact date when you made the shipment of yams on the vessel known as the FELIPE?

A The FELIPE: Was about at the end of May or the

Q And I take it that these yams were lying about the floor of the warehouse?

A Piles.

Q Piles? They were not packed?

A Not packed, no.

Q Do you know when these yams were received in your warehouse?

A Yes, about March.

Q So, in other words, these yams had been laying in your warehouse from March until June 2nd when you received this order?

A Right, sir.

Q When they were in your warehouse in piles, were they covered with anything?

A No covers, sir.

Q And how high were the piles?

A Like one meter and a half.

Q About five feet high?

A Right, sir.

Q And how wide were the piles?

A About another meter and a half.

Q And how many yams would you say were in each pile?

A In each pile?

Q Yes.

A It's a long pile.

Q It's a continuous pile?

A A continuous pile, yes.

Q In other words, there would be piles one and a half meter high and one and a half meter wide?

A Right.

Q Was there any space between these piles?

A Yes, we make like this, from there, up to here, we make a pile, right. We skip about one meter, and then make another pile of the same size.

Q And how many piles would you say you had in your warehouse?

A I don't remember now.

Q Do you know how many yams were in each pile?

A No, sir.

Q Now, these yams came in in March of 1974, into the warehouse and were piled?

A Right, sir.

Q And they remained in that pile from the time they initially came into the warehouse until the time you started to pack for Vana in June?

A Right, sir.

Q Now, according to your testimony, the yams were

originally planted in April and they were fully matured in about November or December; is that correct?

A December, sir.

Q And in December were these yams taken out from the mounds of the earth that you described in your farm in Palmira?

A The yams that remained in my warehouse was taken out in March.

Q In March?

A Yes, sir.

Q The yams that came from your farm in Palmira were taken from the earth in March?

A Right, sir.

Q So that although they were ready to be harvested in November or December, you allowed them to remain in the earth until March?

A Right, sir.

Q Now, during the time that they remained in the earth from November, December, when they were fully matured and ready for harvesting until March, did you have any excessive rains or any unusual climatic conditions in Palmira?

A From December to March?

Q Yes.

A No rains, sir.

Q No rain?

A No, sir.

Q And no unusual climatic conditions?

A No, sir.

Q What was done with the yams from November to March? What did you do to the mounds that contained the yams from November to March in your farm in Palmira?

A Palmira?

Q Yes.

A From Nov[illegible]er to March?

Q Right.

A We are finished taking out our crop. We take out the yam, right. Then we start to burn the vine leaves.

Q Were all of the yams taken out of the ground in November or December, January, February or March? When was the last yam taken out of the ground?

A I said early March.

Q Early March?

A Yes.

Q And then they were brought to the warehouse?

A Right, sir.

Q And they remained in these piles?

A Right, sir.

A O.K.

(A brief recess was taken.)

BY MR. GIALLORENZI:

Q When you received this order from Vana on June 2nd or 3rd, were there any yams that had already been packed into cartons?

A No, sir.

Q They were all loose in these piles?

A Piles, yes, sir.

Q And when did you start to pack the yams into the cartons?

A Could be the six, seven.

Q And they were being packed at two tables?

A At two tables, yes, sir.

Q With about 40 men working at both tables?

A 16 men, sir.

Q 16 at each table?

A Eight at each table.

Q Eight packers at each table?

A Right, 16 together.

Q And they were being assisted by men who would pick up the yams from the piles and bring them to the table?

A Yes, sir.

Q So they would be packing 16 cartons at the same time?

A Yes, sir.

Q During those six or seven days that they were packing these yams, were you at the warehouse No. 1?

A Most of the time, yes, sir.

Q When you say most of the time, how many days would you say you spent there?

A You want in hours a day?

Q Let me say first days and then I will ask you in hours.

A Could be seven days or the eight days, and in each day I spend maybe seven hours, eight hours a day.

Q You spent seven or eight hours a day each day while they were packing?

A Right.

Q Where was your office located in this warehouse?

A It's in--it's like from here to there. (Indicating)

Q About seven or eight feet?

A It's no office. It's a desk.

Q From the desk, could you see the two tables that were being packed, at which they were doing the packing?

A From my desk?

Q Yes.

A Yes.

Q And you stayed there continuously except the time you went for lunch?

A I stay.

Q What did you do?

A Walked around, checking that they follow instruction.

Q Did you go outside and attend to some other business?

A I leave the warehouse maybe for ten minutes.

Q Ten minutes?

A Twenty minutes.

Q Out of a seven or eight-hour day, you left the warehouse for twenty minutes total?

A In a day?

Q Yes.

A You can say forty minutes.

Q Forty minutes total.

To pack 5,000 cartons, how many yams would you need?

A About between 55,000 to 60,000 yams.

Q Just before they put the individual yams in

the white paper, how many of them did you personally see out of the 55,000 to 60,000?

A Most of them.

Q How many? Give me an approximation.

A Of the 55,000--

Q The 60,000, before they put them in the white paper, how many of them did you actually see?

A I can't tell you exactly.

Q Approximately, I said.

A Could be 40, 45, 35.

Q That's a big difference. Give me an approximate amount.

A Say 45,000.

Q You saw 45,000 personally before they were wrapped in the white paper and put into the cartons?

A Right, sir.

Q Now, you testified that you bought sufficient yams to fill 3,500 to 4,000 cartons.

A Right, sir.

Q And you had purchased them from three separate and distinct farms.

A Right, sir.

Q In other words, they were not your own production?

them? That's the last time you saw them?

A No, sir. The last time I saw the yam--

Q In the warehouse?

A In the warehouse?

Q Yes.

A When it's packed and put in the truck.

MR. McCONNELL: It seems to me that's the last time anybody could have seen them in the warehouse.

MR. GIALLORENZI: That's what I said.

Q Then they were taken to the pier?

A Right, sir.

Q And stored in this warehouse which you described as owned by the government?

A Right, sir.

Q And did you examine the cartons while they were at the pier awaiting loading into the vessel?

A Please repeat that.

Q Did you examine any of the cartons while they were at the pier awaiting loading into the vessel?

A Of each pile, I check two, three cartons. I do in this way. Take a carton, take the top out, because the yam covered with paper. I take the paper out, you know, and see if the yam is good, no holes,

look fresh, and it's hard. I put it again, wrap it again and put it in. In each pile, I do that, take two, three yams, two or three cartons.

Q How many yams would you say you saw at the pier?

A How many cartons or how many yams?

Q First, cartons.

A Three cartons off each pallet.

Q How many pallets were there?

A I think they pallet there 40 or 48, something like that.

Q Forty-eight pallets in all?

A No, 48 cartons per pallet.

Q Forty-eight cartons per pallet?

A Right.

Q And you examined two or three--

A Of them, yes.

Q How long did it take you to examine those two or three cartons in each pallet?

A It take me ten minutes.

Q Ten minutes?

A For each pallet, yes.

Q For each pallet, ten minutes?

A Yes.

A No, sir. Maybe the 18th. It has to be before the ship go.

MR. McCONNELL: I think he confused your question. You said where.

Q Was it made at the pier or at the warehouse?

A In the pier or the warehouse?

Q At both places?

A No, in the warehouse pier, the government warehouse.

Q The inspection was made at the government warehouse pier?

A Right.

Q And you are sure you received a certificate for that?

A I'm sure.

Q And we will get that in due course?

A Right, sir.

Q Now, this shipment was made at the end of the season, so to speak?

A Not the last one.

Q Did you have any shipments after this?

A Yes, sir.

Q Do you know when?

A Some in July, something like that.

Q Were they made by ship?

A By ship, yes.

Q Do you know what carrier carried them?

A Could be Prudential Grace Line or Grancolombiana, I don't know.

Q When does the season for shipment of yams from Colombia normally end?

A At the end of July or in August.

Q But most of the shipments are made prior to that time?

A When you say prior, it's before.

MR. McCONNELL: Before.

A Yes.

Q So that by the time a shipment is made in June, the crop is practically sold?

A Is almost, yes.

Q When shipments are made of yams from Colombia, do you generally give any instructions to the steamship company as to the manner in which the yams are to be stowed in the vessel?

A I don't get the question.

Q When shipments are usually made of yams from Colombia, do you usually give instructions to the carrier as to the manner in which the yams are to be

stowed?

A No, sir.

Q You do not?

A No, it's not my cargo company. It's not my company.

Q Well, does the shipper, you, ever give the company instructions as to the manner in which they should stow the yams aboard the vessel?

A Will you please repeat the question?

MR. GIALLORENZI: Please read the question to the witness.

THE WITNESS: Or use another word, please. I don't understand that.

Q Well, do you tell the steamship company how to stow the yams?

A To storage the yam?

Q Yes.

A It's not my company. How am I going to tell them about storage?

Q I show you Plaintiff's Exhibit 4 for identification, in which you wrote a letter to Grancolombiana telling them the manner in which you wanted these yams stowed; is that correct?

A That is correct. That is correct, yes.

Q Do you usually write such a letter to a steamship company in connection with the shipment of yams?

A If my buyer requests it, I do.

Q Did Vana ever request you to write a letter to Grancolombiana with regard to the method of stowing the cargo aboard the vessel--

A Just a minute.

Q --before June 17, 1974?

A In this case, I see that Vana request to me, ask the company that the yam be storaged in ventilation.

Q Had you ever received a similar request from any of your consignees with reference to the shipment of yams?

A Sometime, yes.

Q Sometimes yes?

A From Miami.

Q For Miami?

A For Miami, yes.

Q But not from New York?

A That I remember, no.

Q So this is the first time that you remember--

A Right.

Q --that you received instructions from your shipper--

A Right.

Q --with regard to the stowage of yams on a shipment from Cartagena to New York?

A Right.

Q Were you at the pier when they were loading these yams on the METTE SKOU?

A No, sir.

Q Was a representative of your company at the pier when they were loading these yams on the METTE SKOU?

A My broker maybe sent a representative there.

Q I just said a representative. We will get to your broker.

A No.

Q Was your broker, Hermann Schwyn, at the pier when they were loading the yams?

A I don't know. Maybe he send his man to there.

Q Did you have any conversations with Mr. Schwyn or anybody in his company with reference to the loading of these yams on the METTE SKOU?

A No, I send the letter straight to Grancolombiana.

Q Did anybody tell you into what compartment they were loading the yams?

A No, nobody told me that.

questions.

MR. HOOPER: I have a few.

MR. McCONNELL: I would like to explain to the senor: This is the other lawyer that represents the ship.

THE WITNESS: If I may, please, have five minutes.

(A brief recess was taken.)

EXAMINATION BY

MR. HOOPER:

Q Did your company have any representative on board the METTE SKOU during loading or before loading?

A On the ship, you said?

Q On the ship.

A No, sir.

Q No one on the ship?

A No.

Q You testified that the order for the shipment in suit was placed by telephone from Mr. Sousa in New York.

Did you have any telephone conversations subsequent or after that first telephone conversation in reference to the yams in suit?

A Maybe I call Mr. Sousa to say: "The yam is

gone." I call many times Mr. Sousa. I talk to him many times.

Q Did you call him before the ship sailed?

A It could be before or after. I don't remember.

Q Did you know where on board the ship the yams were loaded?

A No, sir.

Q Did your broker have a representative on board the ship?

A I don't know that.

Q Would he normally have a representative on board the ship when loading?

A They normally have at the pier, as far as I know.

Q Excuse me?

A They normally have at the pier.

Q When did you get the instructions from Mr. Sousa to issue the letter instruction to the ship, which is marked as Plaintiff's Exhibit 4 for identification?

A Had to be before the ship go.

Q How long before the ship goes did you get these instructions from Mr. Sousa?

A I don't remember quite well. It could be six

days, four days.

Q Was the ship in port when you got the instructions?

A I don't remember that.

Q Back to the growing of the yams: You testified that the yams were planted in April and in a mound with some corn.

A Right.

Q And then nine months later, they are mature.

A Right, sir.

Q What, if anything, do you do for the yams between planting in April and harvesting?

A I don't get the question.

Q Do yams require cultivation during their growing period?

A Cultivation?

Q Do you have to weed the yams, do anything to the earth around the yams?

A Just clean.

Q Just clean the earth around the yams?

A Right.

Q Do you put any kind of spray on the plants?

A No, sir.

Q Then in November, you say, they are ready to

be harvested?

A Say harvested at the end of December.

Q But you left these in the ground until March?

A Yes, sir.

Q You said that the yams are dug from the ground with a stick.

Do you mean just a straight stick or is it a shovel? What does it look like?

A It's a stick.

Q Just a stick?

A Yes.

Q Are they taken immediately from the ground and put in the basket?

A Taken from the ground, cleaned and put in the basket, yes.

Q You mentioned checking the yams for holes quite often.

A Yes.

Q Why do you do that?

A Because sometimes when the people take the yam on the farm, the stick go into the yam and make hole.

Q What does that do to the yam?

A That yam we used for seed or for internal consumption.

Q What would happen to the yam with a hole in it if you ship it to New York?

A It has a hole.

Q Yes.

A That kind of yam, no, sir.

Q Nothing would happen?

A No.

Q You drew a sketch here to give us the size of a yam, which has been marked as Plaintiff's Exhibit 2 for identification.

Is the skin of the yam as smooth as you show here in your sketch?

A As smooth?

Q Does it have any bumps on it?

A Well, it's clean and beautiful, you know, and some have, you know--not so perfect, but is clean. Not like this, a little corrugated.

Q Like the table top?

A Yes, a little corrugated, yes.

Q You also mentioned the package you shipped them in. I attempted to make a sketch of the carton. Is that the carton that you described?

A This, this and the other hole on this side.

Q In other words, the line on the top indicates

an open part in the top of the carton?

A Right.

Q And there is a hole in each end to put your hands into to lift it up?

A And ventilation.

Q And give ventilation?

A Yes.

Q This is the kind of carton?

A Yes, sir.

MR. HOOPER: I would like to have this sketch marked as Defendant Skou Exhibit A for identification.

MR. McCONNELL: Mr. Hooper, would you care to indicate the other handle hole which the witness indicated was there?

MR. HOOPER: I will attempt to do that.

MR. McCONNELL: Note my objection to the size of the handle holes in the sketch.

(Sketch of carton made by Mr. Hooper marked Defendant Skou Exhibit A for identification, as of this date.)

BY MR. HOOPER:

Q What is the floor--

MR. McCONNELL: Before we leave this

exhibit, Mr. Hooper, I wonder if it would be a good idea to indicate on the sketch the manner in which the hole in the top is formed, which is by the flaps of the carton which don't completely close. This hole is not a cut-out in the top.

MR. HOOPER: I have drawn flaps. Would that do it or would you like to mark them as flaps?

MR. McCONNELL: Thank you, Mr. Hooper.

BY MR. HOOPER:

Q What are the floors of your warehouse made of?

A Cement and we use sand on top.

Q So that when you put the piles of yams on the floor, you are putting the piles on top of sand which is on top of cement?

A Right.

Q How deep is the sand?

A It's about an inch.

Q How is the warehouse drained? Say, if it rains and water comes in, how does the water go out of the warehouse?

A It has drains, you know.

Q Does it have drains in the middle of the floor or on the ends?

A The floor is not like this. It's like this.

Q Slanted and the water would drain off, because it's slanted?

A The water come through the front of the warehouse.

Q How long does any one yam remain in your warehouse?

A How long?

Q How long a period of time does the yam stay in the warehouse?

A It depends on--how do I say that? Excuse me, please.

On the quantity of yam I need to export, it depends on that, on what I sell.

Q Am I correct in assuming that in March all of the yams were taken from your fields, from your farms?

A Right.

Q And then they were placed in your warehouses?

A Right.

Q Then they were removed from your warehouses as you sold them? I imagine they were removed from the tops of the piles as you sold them?

A No, no.

Q How are they removed?

Q About two feet long.

MR. McCONNELL: Eighteen inches.

A High is about 11 or 12 inches and the width is about this.

MR. McCONNELL: Fifteen inches?

A About fifteen inches.

MR. HOOPER: I have marked this sketch, Defendant Skou Exhibit A, to reflect the dimensions.

Q Is that correct, eighteen inches long, eleven or twelve inches high and about fifteen inches wide?

A Correct.

Q How many yams do you fit in this?

A It depends on the size, 16, 14, 11.

Q And each yam is wrapped in paper?

A Yes.

Q Did you get any reports from your broker as to how the yams were stored on the ship?

A Will you please repeat that?

Q Say, after the ship sailed or before the ship sailed and after your yams were loaded onto the ship, does your broker ever tell you the manner in which the yams were stored on the ship?

A No, sir.

Q Did you ask him?

A No, sir.

Q Does he normally do this? Does anyone normally tell you how the yams have been loaded onto a ship?

A They told me?

Q Do they normally tell you?

A No, sir.

Q During this packing operation, you stayed in the warehouse quite a while.

How long did your men work in the warehouse each day of the packing operation?

A It depends on how busy we are, ten, twelve hours, sometimes 18 hours, 15 hours.

Q And you would stay there about seven hours; is that correct?

A Seven, eight hours, yes. Also ten, too. It depends.

Q How long have you used the cartons shown in Defendant Skou Exhibit A to ship your yams?

A Since about 1971, something like that.

Q What did you use before that? What kind of carton did you use before 1971 to ship your yams?

A I use a crate, wooden crate.

Q Were they slatted?

A No good. We change. That was no good.

Q Wooden crates?

A Wooden crates, yes.

Q Were they solid wooden crates or did they have slats that would let you look at the yams in through the slats?

A This size. Between one with one. This size.

MR. McCONNELL: Indicating slats.

Q Am I correct that before 1971 you used wooden crates to ship your yams?

A Yes.

Q And these wooden crates were not solid but were made up of slats of wood with spaces between them?

A Yes.

MR. HOOPER: I have no further questions.

BY MR. McCONNELL:

Q Can you tell us why, Senor, you discontinued the use of the slatted wooden crates?

A Was no good, they break.

Q They broke?

A Break very easily, and damage. One is break very easy and because it was wooden, and the yam was wrapped, you know, was wrapped. The slat of the wood is something like this and at that time they damage the yam. That's why we don't use those anymore.

Q On Plaintiff's Exhibit 2 for identification, you drew a representation of an outline of a yam.

Am I correct that a two-pound yam would be smaller than a five or six-pound yam?

A Right, sir.

Q What size yam is this in Plaintiff's Exhibit 2 for identification, pound-wise? Five?

A Four and a half, five. It depend.

Q Would you just write the number of pounds of this particular size, approximately? Put four and a half or five.

(Witness complies)

Q Do yams require ventilation?

A They require ventilation, yes, sir.

Q On the bill of lading, which is bill of lading No. 1, Plaintiff's Exhibit 3 for identification, under "marks and numbers," these yams are described as, or the boxes are described as, "Andina Name, Super Seleccionado," and then the words "Product of Colombia."

Was this marking on those boxes which you shipped in this shipment?

A On these boxes?

Q Yes.

A Yes, sir.

Q What does the word "N-a-m-e" mean?

A Yam.

Q Can you tell us what "Super Seleccionado" means?

A It means that the yam in the carton is a yam that fill all the requirements of a yam class A, super A.

Q What is Seleccionado? What does it mean?

A Selected.

Q What does super mean?

A Super selected.

Q Does that indicate a selection of more than one selection?

A Right, sir.

Q Is that an official government name or is that the name you apply to the yams yourself?

A This is my commercial name that I apply.

Q That's your brand name?

A Brand name, yes.

MR. McCONNELL: That's all.

BY MR. GIALLORENZI:

Q Does the government of Colombia have any categories with reference to the yams? Class A, Class B, Class C?

PLAINTIFF'S EXHIBIT 13

C E R T I F I C A T E

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, ROBERTA LERCH, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That ARTURO MEJIA DIAZ, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of August, 1975.

Roberta Lerch
ROBERTA LERCH, CSR

August 13, 1975 PLAINTIFF'S EXHIBIT 13 74

I N D E X

WITNESS

PLAINTIFF'S	EXAMINATION BY	PAGE
Arturo Mejia Diaz	Mr. McConnell	3, 69
	Mr. Giallorenzi	31, 71
	Mr. Hooper	58

EXHIBITS

PLAINTIFF'S		FOR IDENT.
1	Invoice	6
2	Diagram	10
3	Bill of lading	21
4	Copy of letter from Senor Mejia Diaz to Grancolombiana at Cartagena together with certified translation	30

DEFENDANT SKOU		FOR IDENT.
A	Sketch of carton made by Mr. Hooper	63

oOo

Common Reporting Company, Inc.

DEFENDANT I.T.O. EXHIBIT G. 27338/75

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

- :

Index #

INTERNATIONAL TERMINAL OPERATING COMPANY, INC.,

Plaintiff

NOTICE OF APPEARANCE, ANSWER AND DEMAND FOR BILL OF PARTICULARS

- against -

VANA TRADING COMPANY, INC.,

Defendant.

- :

S I R :

PLEASE TAKE NOTICE that the defendant, Vana Trading Company, Inc., hereby appears in this action and that the undersigned has been retained as attorney for said defendant, and demands that you serve all papers in this action upon the undersigned at the address stated below.

PLEASE TAKE FURTHER NOTICE that the defendant hereby interposes the following answer to the complaint herein.

AS TO THE FIRST CAUSE OF ACTION:

1. Denies knowledge and information sufficient to form a belief as to "1" of the complaint.

2. Denies each and every allegation contained in paragraphs "2" and "3" of the complaint.

AS TO THE SECOND CAUSE OF ACTION:

3. Repeats each and every answer to "1" and "2" above in response to Paragraph "5" of the complaint as if set forth at length herein, with the same force and effect.

DEFENDANT I.T.O. EXHIBIT G

4. Denies each and every allegation contained in Paragraphs "6" and "7" of the complaint.

AS AND FOR A SEPARATE DEFENSE AND COUNTERCLAIM:

1. That at all the times herein mentioned, the defendant was and is a corporation existing under the Laws of the State of New York.

2. That on or about July 1, 1974, the plaintiff contracted and was hired to provide personnel and equipment to unload imported merchandise of defendant into trucks separately hired by defendant.

3. That plaintiff breached said contract and hiring in that it did not timely unload and load, or provide personnel and equipment to continuously perform the required work, thereby causing damage to the defendant in the sum of $2,000.00

WHEREFORE, defendant demands judgment dismissing the complaint and judgment for defendant on its counterclaim, with interest, costs and disbursements.

Dated: New York, N.Y.
April 2, 1975

Yours, etc.

Sillik Polayes
Attorney for Defendant
Office & P.O. Address
170 Broadway
New York,N.Y. 10038

TO:

Northrop & Jessop
Attorneys for Plainitff
401 Broadway
New York,N.Y. 10013
WO 6-1250

BEST COPY AVAILABLE

DEFENDANT I.T.O. EXHIBIT H-1.

WORTH 6-1250

NORTHROP & JESSOP

COUNSELLORS AT LAW

WILLIAM B. NORTHROP (1888-1965)
HARRY L. JESSOP
LEONARD C. JESSOP
LEON S. HARRIS
LAWRENCE S. BERKOWITZ

401 BROADWAY
NEW YORK, N. Y. 10013

June 19, 1975

SILLIK POLAYES, ESQ.
170 Broadway
New York, New York 10038

Re: Internation Terminal
Operating Co., Inc.
Vs: Vana Trading Co., Inc.

Dear Mr. Polayes:

Pursuant to our conversation regarding settlement of this action please be advised that the notice to take oral deposition scheduled for June 20, 1975 at our office is hereby adjourned without date and further that we will not require you at this time to answer our demand for a verified bill of particulars as to your counterclaim herein.

WE have written to our client indicating that we recommend settlement of this action for the amount as discussed and we feel that they will follow our recommendation.

Please date your file ahead accordingly and as soon as we receive word from client we will be in touch with your office. Thank you for your cooperation in this matter we remain

Very truly yours,

Northrop & Jessop

NORTHROP & JESSOP

DVM/as

DEFENDANT I.T.O. EXHIBIT H-2.

NORTHROP & JESSOP
COUNSELLORS AT LAW

401 BROADWAY
NEW YORK, N. Y. 10013
212 - 966-1250

WILLIAM B. NORTHROP (1898-1965)
LEON S. HARRIS
LAWRENCE S. BERKOWITZ

ALAN M. LUBINER (N. J. BAR ONLY)

OF COUNSEL
HARRY L. JESSOP
LEONARD C. JESSOP

September 10, 1975

Sillik Polayes, Esq.
170 Broadway
New York, N. Y. 10038

Re: INTERNATIONAL TERMINAL OPERATING CO., INC.
vs: VANA TRADING

Dear Mr. Polayes:

Pursuant to our prior settlement agreement, we are enclosing herewith a duly executed General Releaseas well as a Stipulation discontinuing this action.

Please execute and return one copy of theStipulation and authorize a release of the escrow monies at this time.

Very truly yours,

NORTHROP & JESSOP

PW/etk
enc.

DEFENDANT I.T.O. EXHIBIT H-3.

CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK

Index No. **27338/75**

INTERNATIONAL TERMINAL OPERATING COMPANY, INC.

Plaintiff

against

VANA TRADING COMPANY, INC.
150 Broadway
New York, N. Y. 10038

Defendant

STIPULATION DISCONTINUING ACTION

IT IS HEREBY STIPULATED AND AGREED, *by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby is discontinued, without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.*

Dated: **July 10, 1975**
NEW YORK, NEW YORK.

NORTHROP & JESSOP
Attorneys for Plaintiff

Attorney for Defendant

BEST COPY AVAILABLE

DEFENDANT I.T.O. EXHIBIT H-4.

B 111—General Release by Corporation.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

To all to whom these Presents shall come or may Concern,

Greeting: *KNOW YE, That* INTERNATIONAL TERMINAL OPERATING CO., INC. located at 17 Battery Place in the City and State of New York

a corporation organized and existing under and by virtue of the laws of the State *of* ~~NEW YORK~~ DELAWARE *for and in consideration of the sum of* FIVE HUNDRED AND 00/100---------- *dollars ($* 500.00 *)*

lawful money of the United States of America to it in hand paid by

VANA TRADING COMPANY, Inc.

the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said

VANA TRADING COMPANY, INC., its

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against

VANA TRADING COMPANY, INC.

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

In Witness Whereof, *the said* INTERNATIONAL TERMINAL OPERATING CO., INC. *has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the* 31st *day of* July *1975*

(Corporate Seal)

INTERNATIONAL TERMINAL OPERATING CO., INC.

By H. J. Ingham
Assistant Treasurer

STATE OF NEW YORK *COUNTY OF* NEW YORK *ss.:*

On the 31st *day of* July *1975 before me personally came* H. J. Ingham *to me known, who, being by me duly sworn, did depose and say that he resides at No.* 17 Battery Place, New York, N. Y. 10004

that he is the Assistant Treasurer *of* INTERNATIONAL TERMINAL OPERATING CO., INC. *the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of of said corporation; and that he signed his name thereto by like order.*

H. J. Ingham

Andrew McMahon
Notary Public, State of New York
No. 24-7683638
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

DEFENDANT I.T.O. EXHIBIT H-5.

To all to whom these Presents shall come or may Concern,

Greeting: *KNOW YE, That* Vana Trading Company, Inc.,

150 Broadway, New York, N.Y.

a corporation organized and existing under and by virtue of the laws of the State *of* New York *for and in consideration of the sum of*

One and 00/100 *dollars ($* 1.00 *)*

lawful money of the United States of America to it in hand paid by

International Terminal Operating Company, Inc.

the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said International Terminal Operating Company, Inc., its

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against

International Terminal Operating Company, Inc.,

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, arising out of this action, also described in the summons and complaint filed in the N.Y. City Civil Court, County of New York, bearing docket number

This release is intended solely to release all claims for damages consisting of administrative and trucking expenses incurred by Vana Trading Company, Inc., --- contained in its answer dated April 2, 1975 with respect to services rendered by International Terminal Operating Company, Inc., between July 1, 1974 and July 11, 1974.

This release may not be changed orally.

In Witness Whereof, *the said* Vana Trading Company, Inc.

has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 11th *day of* ~~July~~ August *19* 75

(Corporate Seal)

VANA TRADING COMPANY INC.

By Louis Sousa

Louis Sousa, President

STATE OF New York *COUNTY OF* New York *ss.:*

On the 11th *day of* ~~July~~ August *19* 75 *before me personally came*

Louis Sousa *to me known, who, being by me duly sworn, did depose and say that he resides at No.* 380 Motts Cove Road, Roslyn Harbor, N.Y.

that he is the President *of* Vana Trading Company, Inc. *the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of* directors *of said corporation; and that he signed his name thereto by like order.*

John Hay McConnell

JOHN HAY McCONNELL
Notary Public, State of New York
No. 30-2666365
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1977

DEFENDANT I.T.O. EXHIBIT H FOR IDENTIFICATION.

3111—General Release by Corporation.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

To all to whom these Presents shall come or may Concern,

Greeting: *KNOW YE, That* INTERNATIONAL TERMINAL OPERATING CO., INC. located at 17 Battery Place in the City and State of New York

a corporation organized and existing under and by virtue of the laws of the State *of* ~~XXXXXXX~~ DELAWARE *for and in consideration of the sum of* FIVE HUNDRED AND 00/100---------- *dollars ($* 500.00 *)*

lawful money of the United States of America to it in hand paid by
VANA TRADING COMPANY, Inc.

the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said
VANA TRADING COMPANY, INC., its

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against
VANA TRADING COMPANY, INC.

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

In Witness Whereof, *the said* INTERNATIONAL TERMINAL OPERATING CO., INC. *has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the* 31st *day of* July *1975*

(Corporate Seal)

INTERNATIONAL TERMINAL OPERATING CO., INC.

By H. J. Ingham
Assistant Treasurer

STATE OF NEW YORK *COUNTY OF* NEW YORK *ss.:*

On the 31st *day of* July *1975 before me personally came*
H. J. Ingham *to me known, who, being by me duly sworn, did depose and say that he resides at No.* 17 Battery Place, New York, N. Y. 10004

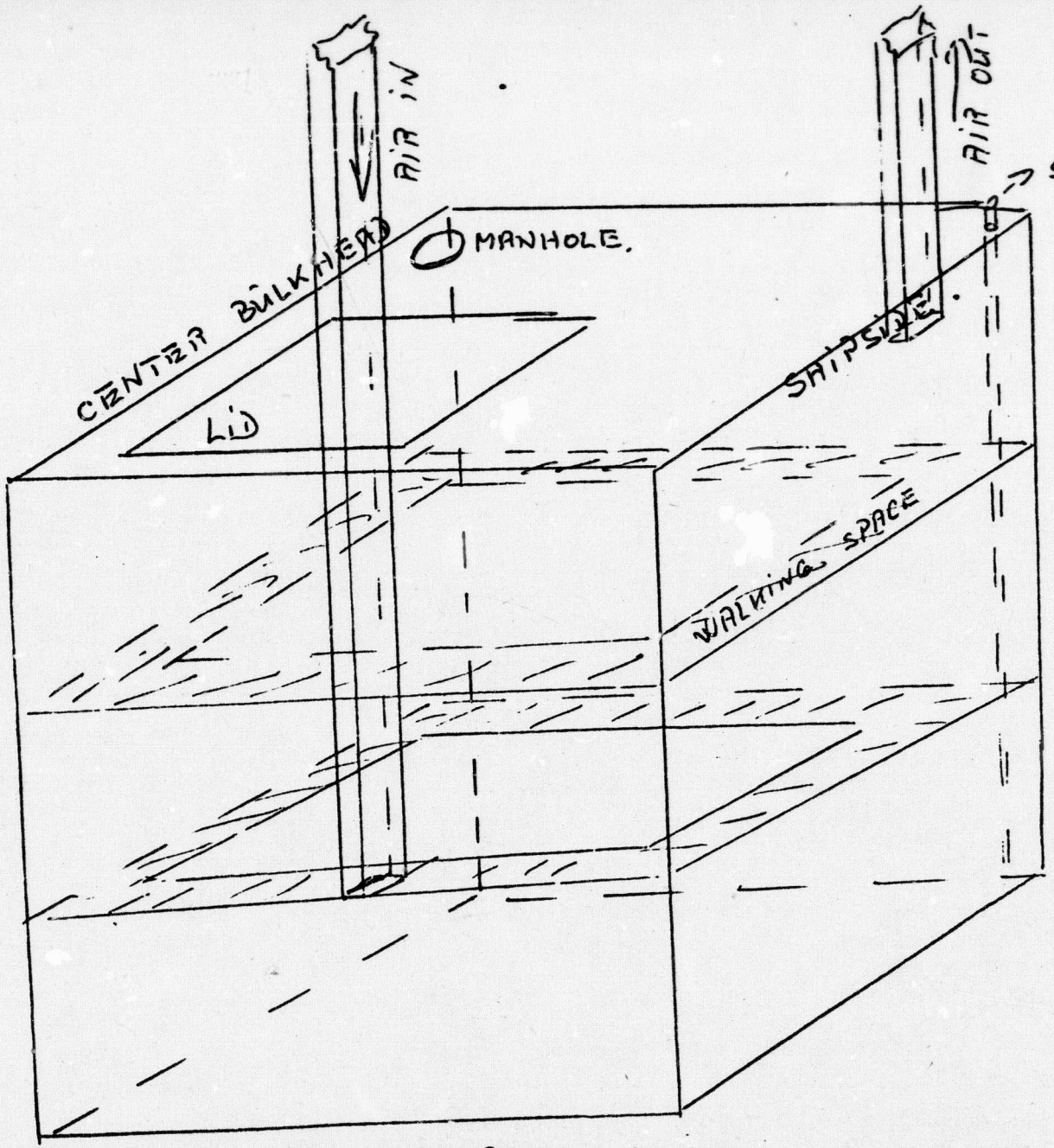
that he is the Assistant Treasurer *of* INTERNATIONAL TERMINAL OPERATING CO., INC *the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of of said corporation; and that he signed h is name thereto by like order.*

H. J. Ingham

Arnold Malone
Notary Public, State of New York
No. 24-7683638
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 19 76

450a

DEFENDANT OVE SKOU EXHIBIT K.



PORT DEEPTANK
SEEN FROM FORWARD.

PLFF'S EX. "1" for IDENT
4/22/76

DEFENDANT FLOTA EXHIBIT L.

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange.

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in Copenhagen the 26th day of April 19 74

Between OVE SKOU, Agent to

Owners of the good Danish ~~Steamship~~ Motorship "METTE SKOU" of Copenhagen

of 4261.58 tons gross register, and 2342.07 tons net register, having engines of +100 A 1 indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed at Br. Lloyds of about 416.000 cubic feet bale capacity, and about 6950 tons of 224 lbs. deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding ~~one and one-half percent of ship's deadweight capacity, allowing a minimum of fifty tons~~) on a draft of 24 feet 0 inches on ~~Summer freeboard~~, inclusive of permanent bunkers, which are of the capacity of about what is reasonable for the voyage tons of fuel, and capable of steaming, fully laden, under good weather conditions about 16½ knots on a consumption of about 22 tons of ~~best Welsh coal, best grade fuel oil, best grade Diesel oil~~, now Intermediate Fuel Oil maximum 1000 seconds Redwood plus about 2 tons Diesel Oil

and FLOTA MERCANTE GRANCOLOMBIANA S.A. Charterers of the City of Bogota, Colombia

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about Twelve (12) Months

within below mentioned trading limits.

Charterers to have liberty to sublet the vesssel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at Liverpool, England

~~in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of the tide, except as otherwise provided in clause No. 9) as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 6.~~ Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding (See Clause 46)

~~(vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or port in~~ ~~North America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America~~ as below ~~and/or Europe, and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand~~, but excluding ~~Magdalena River, River St. Lawrence between October 31st and May 15th, Hudson Bay and~~ all unsafe ports ~~also excluding, when out of season, White Sea, Black Sea and the Baltic.~~

(See Clause 47)

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

3. ~~That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than tons and not more than tons and to be redelivered with not less than tons and not more than tons.~~ (As per Clause 43)

BEST COPY AVAILABLE

DEFENDANT FLOTA EXHIBIT L

4. ~~That the Charterers shall pay for the use and hire of the said Vessel at the rate of~~ (See Clause 45)

~~United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores on ... summer freeboard, per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at ...~~

~~unless otherwise mutually agreed. Charterers are to give Owners not less than ... days~~ / (See Clause 45),
~~notice of vessel's expected date of re-delivery, and probable port~~

5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time to count as laytime.

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

WHEN/WHERE ready.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground.

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners $10.00 per day per passenger for accommodations and meals. However it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

If required by Charterers

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of $4.00 per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc., Charterers paying ~~at the current rate~~ per meal, for all such victualling. 60 cents

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. ~~That the Owners or vessel have the option of continuing this charter for a further period of ... days beyond the date mentioned in clause 14 hereof, on giving written notice thereof to the Owners or their Agents ... days previous to the expiration of the first-named term, or failing such option, and should vessel~~

14. That if required by Charterers, time not to commence before May 2, 1974 and should vessel not have given written notice of readiness on or before May 10, 1974 but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, dry docking for the purpose of examining bottom, or by any other cause preventing the full working of the vessel the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The Vessel shall have the liberty to sail with or without pilots, to tow and assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

19. That all disputes and salvage shall be for ... and by such Owner's Arbitrators, ... and Charterers' expenses and Crew's proportion. General Average, shall be adjusted, stated and settled, according to ~~Rules 1 to 15, inclusive, of the Antwerp Rules, 1924, as to matters~~ York-Antwerp Rules 1924, at such port or place in the United States as may be selected by the ~~owner~~, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

Charterers

~~In the event of accident, danger, damage, or disaster, before or after commencement of the voyage, resulting from any cause, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifice, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.~~

DEFENDANT FLOTA EXHIBIT L

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. ~~Fuel to be supplied by Time Charterers at current prices in the respective ports. Bunkers to be taken on board as required, but Owners to have the option of supplying any fuel required for the vessel's requirements at current prices in the respective ports.~~ The vessel to be delivered with bunkers sufficient to reach the first bunkering port, and redelivered with bunkers sufficient to reach the next bunkering port. Bunkers to be paid for at the current prices at the ports of delivery and redelivery.

~~Fuel to be supplied by Time Charterers at current prices in the respective ports. Bunkers to be taken on board as required, but Owners to have the option of supplying any fuel required for the vessel's requirements at current prices in the respective ports. Bunkers to be cleaned and pumped when ever Charterers and Captain think necessary, at least once in every six months, sufficient time for bunkering and pumpout of the bins to be suspended until she is again in proper state for the service.~~

22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to ~~three tons~~ (See Clause 30), also providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel lanterns and oil for night work, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The Charterers to have the use of any gear on board the vessel.

23. ~~Vessel to work ... day and night, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging~~ steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeymen for overtime work done in accordance ~~with the working hours and~~ rates stated in the ship's articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby. (See Clause 23A)

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder

18

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

~~Both to Blame Collision Clause~~

~~If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.~~

25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

~~27. A commission of 2½ per cent is payable by the Vessel and Owners to~~

~~on hire earned and paid on this Charter and also upon any continuation or extension of this Charter.~~

28. An address commission of 2½ per cent payable to Grancolombiana (N.Y.) Inc. on the hire earned and paid under this Charter.

Clauses 23A and 29 through 47 as attached hereto, are incorporated in this Charter Party.

~~By cable authority from~~

~~The original Charter Party is also permissible~~ For Owners

BROKERS

FLOTA MERCANTE GRANCOLOMBIANA S.A.
BY: GRANCOLOMBIANA (NEW YORK), INC.
General Agents

For and on Behalf of the Owners
O V E S K O U

Mogens Gundel
As Agent only

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DEFENDANT FLOTA EXHIBIT L

RIDER TO CHARTER PARTY DATED APRIL 26, 1974
M/S "METTE SKOU"

39. The deeptanks are to be used for drycargo only. The wingtanks are normally used for bunkers or ballast water only but to be at Charterers' disposal for cargo purposes but cleaning to be for Charterers' account and on their time.

40. Grainfittings, if any, for Charterers' account.

41. If vessel calls at any U.S. port for purposes of loading or discharging cargo and/or embarking or disembarking passengers, vessel's cargo gear and all other equipment shall comply with regulations established by U.S. Public Law 85-742 Part 9 (Safety & Health Regulations for Longshoring). If longshoremen are not permitted to work due to failure of the Master and/or Owners and/or Owners' Agents to comply with the foregoing regulations, any delay resulting therefrom shall be for Owners' account.

42. Owners guarantee vessel has not called Cuba since January 1, 1963.

43. The Charterers at the port of delivery, and the Owners at the port of redelivery, shall take over and pay for all fuel remaining on board the vessel at Owners' Current Contract Montreal Price at time of delivery. The vessel to be delivered with bunkers as on board estimated to be about 575 tons intermediate fuel oil and about 125 tons diesel oil. The vessel to be redelivered with not less than 150 tons nor more than 250 tons intermediate fuel oil and not less than 50 tons nor more than 100 tons of diesel oil, but in any case, not less than a sufficient quantity to reach the nearest bunkering station.

44. On-hire survey to be held at port of delivery on Owners' time. Off-hire survey to be held at port of redelivery on Charterers' time. This survey is understood to be for the purpose of determining vessel's condition, bunkers, water, equipment, etc.

45. That the Charterers shall pay for the use and hire of the said vessel at the rate of Fifty Three Hundred Dollars ($ 5.300.00) U.S. Currency per day. It is agreed that Charterers shall remit net charter hire payments and all other amounts due to Owners such as overtime, extra meals, cable expenses, etc., directly to the First National City Bank, 399 Park Avenue, New York, N.Y., for the account of OVE SKOU, Account No. 00035123, Att: WCG-Shipping Department. Hire commences on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a day; hire to continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port in the Galveston/East Coast Canada range, port at Charterers' option. Charterers are to give Owners not less than twenty-one (21) days' notice of vessel's probable redelivery date and not less than ten (10) days' notice of vessel's expected date of redelivery and probable port.

46. Excluding Asphalt, Pitch in Bulk, Bauxite, Mahogany Logs. Ammonium Nitrate carried according Clause 32. Vessel not intended regular ore trade, but Charterers have privilege carry ore whenever necessary.

47. World-wide trade within Institute Warranty Limits, including Magdalena River, not above Barranquilla, excluding Communist controlled countries, Asia, Australia, Palestine, Iceland, Goa, Pakistan, India, Formosa, Korea, China, Indonesia, Israel, Nigeria and Biafra, also Cuba and Dominican Republic excluded, but only during hostilities, excluding Great Lakes, but including Halifax, Montreal and other safe St. Lawrence ports during season. Extra insurance St. Lawrence, if any, according Owners policies and extra fitting or equipment, for Charterers' account. Charterers' privilege breaching Institute Warranty Limits, they paying extra insurance, if any.

DEFENDANT FLOTA EXHIBIT L

RIDER TO CHARTER PARTY DATED APRIL 26, 1974
M/S "METTE SKOU"

23A. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work winches day and night, as required, or alternatively, in Charterers' option, one watchman per hatch, as required. Charterers' agreeing to pay officers, engineers, winchmen, watchmen, deck hands and donkeymen Seven Hundred Dollars ($700.00) U.S. Currency lumpsum per month or pro-rata, together with hire, for overtime work done in connection with working cargo. If the rules of the port, or labor unions, prevent crew from driving winches, shore winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

29. New Jason, New Both-to-Blame Collision Clause and Chamber of Shipping War Risks Clauses 1 and 2, to be fully incorporated in the Charter Party.

30. The "METTE SKOU" is built 1963 and is an open shelterdecker equipped with twelve (12) derricks of five (5) tons capacity, four (4) derricks of ten (10) tons capacity, two (2) derricks of twenty-five (25) tons capacity, has two (2) coiled deeptanks with a total capacity of about 31.595 cubic feet bale, has two (2) wingtanks with a total capacity of about 7875 cubic feet grain, five (5) hatches, electrical ventilation in all holds, and has CO_2 lines in all holds to enable carry cotton. Vessel has passenger accommodation for twelve (12) passengers consisting of six (6) single berth cabins, three (3) double berth cabins which are all air-conditioned with private baths.

31. Owners represent that all cargo battens are fitted and tanktops ceiled.

32. Charterers to have privilege of carrying injurious, inflammable or dangerous goods, explosives, ammunition, etc., provided that they are packed and loaded in accordance with regulations of the Board of Underwriters of New York, according the Danish law or U.S. Coast Guard. Clause 8, as well as any and all other clauses of this Charter Party apply to the cargo described in Clause 32 with equal force and effect as they apply to all other cargo within the provisions of this Charter Party. But when the vessel is trading between South American and European ports, the above cargoes are subject to the approval of the Board of Trade. Extra insurance, if any, for Charterers' account.

33. Charterers to have the privilege of removing any fittings, lashings or dunnage furnished by them.

34. Charterers to have privilege of placing their funnel mark on stack and their name on both sides of the vessel, the painting and removal of same to be on their time and at their expense. Charterers to have liberty to fly their house flag.

35. Owners will keep the vessel's appearance and its coat of paint in good condition.

36. During full currency of this Charter Party or any extension thereof, the Owners shall keep the vessel fully capable and equipped to transit the Panama Canal, in accordance with the rules and regulations governing navigation of the Panama Canal promulgated from time to time by the Governor of the Panama Canal Zone.

37. In the event that the lawfully constituted government of any of the following states, to wit U.S. of America, United Kingdom, Kingdom of Denmark or the U.S.S.R., declares war against any one of the states named above or declares that a state of war exists between itself and any one of the said states, the Owner or the Charterers shall each have the option to cancel the Charter by written or telegraphic notice to the other and unless otherwise agreed such cancellation shall be effective immediately if vessel is then free of cargo but otherwise be effective after the vessel is free of any cargo then on board.

Charterers shall pay amount of any increase subsequent to date in War Risk Insurance premiums on present valuation of vessel, also any such increase in War Risk bonus for crew, the remainder of such premiums and bonus to be for Owners' account.

38. It is understood that stevedore labor charges incurred on account of breakdown of vessel's equipment, unless it can be established that stevedores are responsible will be for Owners' account. No stevedore damage claims will be recognized by Charterers unless such claim is reported in writing to Charterers' Agents at the respective port during port call at which subject damage occurred.

DEFENDANT FLOTA EXHIBIT M.

Monday, July 1, 1974

182nd day of year—183 days to come

Clear
Cloudy
Rain
Snow

Cd de Barranquilla
4 gauges 8/ 9 p.m.

Felipe
3 gauges 8/

Army Base - P.S #3
Motte Shoo - From Wilmington
Docked 0700 hrs
3 gauges 8/5 p.m.

DEFENDANT FLOTA EXHIBIT M

Tuesday, July 2, 1974

183rd day of year—182 days to come

Clear
Cloudy
Rain
Snow

Cd de Buenaventura.
5 gangs 8/6 pm.

Felipe - shifted from N/S to
2 gangs 5/6 pm River end 2130 hrs

Nettle Star at Army Base
6 gangs 8/5 pm
3 " 5/9 pm

Cd de Almeria - from Phila docked 1530
13'00 19'06
Teresa + Nancy Flores
22 labor

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DEFENDANT FLOTA EXHIBIT N.

New York, 19

RECEIVED *in good order, from on board the S. S.* Mette Skou

ID 482198 *Master, from* CARTAGENA

the following packages, ac't Dana Trading Corp - Burgell Enterprises

NO.	NUMBER IN WRITING	FIGURES	SIGNATURE OF RECEIVER
	Findus Name Super Seleccionado 256.598 kl 57.3 E 5000 ctns Yams		
	Verbod Mk.		
97K	Nine Hundred & Fifty	950	L. Edwards
EL Port Said 504	Eight Hundred & Twenty Three	823	C. Griffin
REL 340	Six Hundred & Twenty Four	624	Angel Pagan
Port Said Egypt	Six Hundred Eighty Four	684	E. Burwell
Egypt			Angel V. Pagan
341 V	Three Hundred & Fifty	350	Angel V. Pagan
			Angel V Pagan
T 661 J	Four Hundred & Fifty	450	John Hall
For 100 497.	Eight Hundred & Fifty	850	
	27 ctns Crushed Contents Extract.		
174.76H.	Two Hundred & Fifty One	251	J. Edwards
	21 ctns Record. Gluct. 680		
		49.2	
	On Dock [redacted]	18	

DEFENDANT FLOTA EXHIBIT O.

Office Translation 14.5.74 ik

ASSURANCEFORENINGEN SKULD
(GJENSIDIG) NORGE
DEN DANSKE AFDELING

m.s. METTE SKOU

O

Enc. No. 1: Report of the Ship[illegible] of 6500 Cartons Containing Yam from Cartagena to New York

M/S METTE SKOU arrived at Cartagena on 19th June 1974 at about 1030 hours to load, among other things, 6500 cartons of yam fruit. The fruit was to be loaded in the vessel's deep tanks. The fact is that on top of the deep tank covers was stowed a consignment of coffee for Jacksonville Fla. which had to be discharged before the deep tank covers could be opened. Following the discharging of the coffee, about 1000 bags, on to the quay, the tanks were opened and inspected by the shippers' representative. He asked me whether the deep tanks were the only cargo space available in the ship which I confirmed, all other space being taken.

The deep tanks were approved for transport of the said yam after the shippers' representative had ensured that the holds could be ventilated. The cartons were stowed as shown on the enclosed sketch with three longitudinal and one transversal air ducts for each layer of cartons, leaving a distance of about 3 ft to ship's sides and bulkheads. In this manner a very good passage allowed for air between the cartons. Ample dunnage was placed between each layer of cartons and the dunnage reached right out to ship's sides and bulkheads in order to support the cartons.

The shippers' representative supervised the entire loading and expressed his approval of the ship's way of stowing the cartons.

The cartons were stowed about 1½ cu.ft. a piece but filled 3/4th of the deep tanks which shows that the ventilation space was quite sufficient. How many air changes the ventilators could produce per hour I do not remember, but it would appear from the drawings of the vessel. During the voyage I took, on my own initiative, temperature readings of holds and deep tanks and at no time did these rise above the outdoor temperatures; they may be seen in the log book.

M/S METTE SKOU sailed on 21st June 1974 at about 0330 hours for Jacksonville.

Offered as Defendant Skou Ex. E for ident 4/12/76

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DEFENDANT FLOTA EXHIBIT O

After calling at Jacksonville Fla. and Wilmington N.C. the METTE SKOU arrived at New York on 1st July 1974 at about 0700 hours and moored at the south side of Army Base Terminal. At the arrival the cartons, as well as all other cargo, were examined by the Grancolombiana's surveyor who made no comments to the writer of this report. I would point out that the ship requested that the cartons be discharged at once because of the yam fruit. This request was turned down by Grancolombiana's representative on the spot. The cartons were not discharged until 2nd July 1974 and were then placed in closed premises without ventilation inside the warehouse. In this place it was much warmer than it had been in the deep tanks. This information was passed on to Grancolombiana's surveyor and also entered in the log book. When M/S METTE SKOU sailed on 3rd July 1974 at about 1930 hours the cartons were still in the warehouse without ventilation. Moreover, I would point out that during the discharging at New York we experienced a heat wave with very high day temperatures which might have had adverse effects on the yam fruit.

S/D P. Larsen

DEFENDANT FLOTA EXHIBIT O

Bilag nr. 1: Rapport vedrørende transporten af 6500 kartoner yams fra Cartagena til New York.

M/S

M/S "METTE SKOU" ankom Cartagena d. 19. juni 1974 kl. ca. 1030, for blandt andet at laste 6500 kartoner yamsfrugt. Disse skulle lastes i skibets højtanke. Sagen er, at ovenpå højtankdækkerne lå et parti kaffe til Jacksonville FLA., der først skulle losses, inden dækkerne til højtankene kunne åbnes. Efter at kaffen, ca. 1000 sække, var oplosset på kajen, blev tankene åbnet og inspiceret af afskibernes repræsentant. Denne spurgte mig, om højtankene var den eneste lastrumsspace skibet havde til rådighed, dette blev besvaret bekræftende, at anden space var brugt.

Højtankene blev godkendt til transport af nævnte yams, efter at afskibers repræsentant havde sikret sig, at rummene kunne ventileres. Kartonerne blev stuvet som vist på vedlagte skitse med 3 langskibs samt een tværskibs luftkanal for hvert lag kartoner, samt med ca. 3 fods afstand til skibssider og bulkheads. På denne måde blev der en meget fin passage for luften mellem kartonerne. Der blev lagt rigeligt dunnage mellem hvert lag kartoner, og dunnagen gik helt til skibssider og bulkheads for at støtte kartonerne.

Afskibers repræsentant overværede hele indladningen og udtrykte sin anerkendelse for skibets måde at stuve kartonerne på.

Kartonerne stuvede ca. 1½ cub. fod pr. stk. men fyldte begge højtanke ¾ op, hvilket viser, at ventilationsspace her der været nok af. Hvor mange luftskift ventilatorerne kunne give pr. time, kan jeg ikke huske, men det må fremgå af skibets terminger. Under rejsen foretoges på egen foranledning temperaturmålinger i lastrum og højtanke og disse oversteg på intet tidspunkt udendørstemperaturerne, disse fremgår af skibsdagbogen.

M/S "METTE SKOU" afsejlede d. 21. juni 1974 kl. ca. 0330 til Jacksonville.

Efter anløb af Jacksonville FLA. og Wilmington N.C. ankom M/S "METTE SKOU" New York d. 1. juli 1974 kl. ca. 0700 og fortøjede ved Army Base Terminal south side. Ved ankomsten blev kartonerne så vel som al anden last undersøgt af Grancolombianas surveyer, som intet bemærkede overfor undertegnede. Jeg kan oplyse, at skibet forlangte kartonerne losset med det samme af hensyn til yamsfrugten. Dette blev afslået af Grancolombianas repræsentant på stedet. Kartonerne blev først losset d. 2. juli 1974 og anbragt i et lukket rum uden ventilation inden i pakhuset. På det pågældende sted var der endnu varmere end der havde været i højtankene. Dette bemærkedes også til Grancolombianas surveyer, ligesom det blev indført i skibets dagbog. Da M/S "METTE SKOU" afsejlede d. 3. juli 1974 kl. ca. 1930, stod kartonerne stadig i pakhuset uden ventilation. Yderligere kan det oplyses, at under losningen i New York var der hedebølge med meget høje dagtemperaturer, hvilket kan have haft uheldig indflydelse på yamsfrugten.

P. A. Larsen

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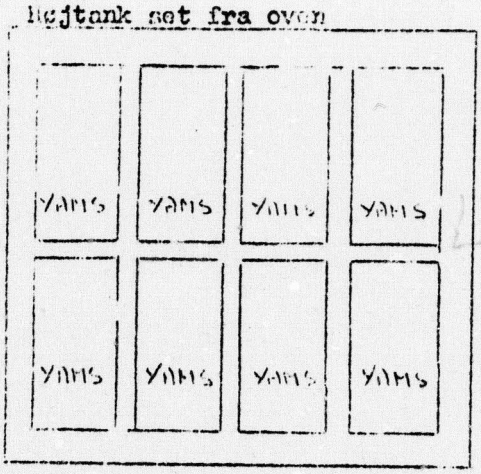
DEFENDANT FLOTA EXHIBIT O

Bilag nr. 2: Skitse over lastens stuvning i M/S"Mette Skous" højtanke.

Højtank set fra oven



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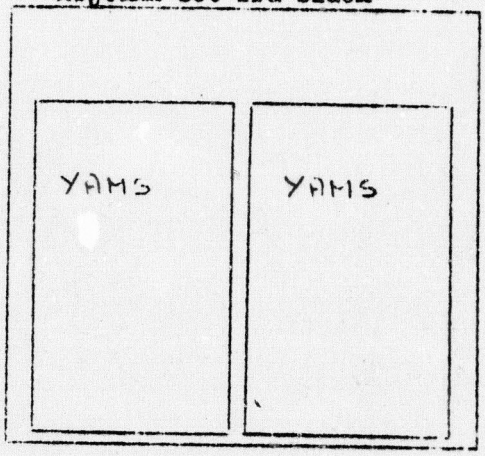

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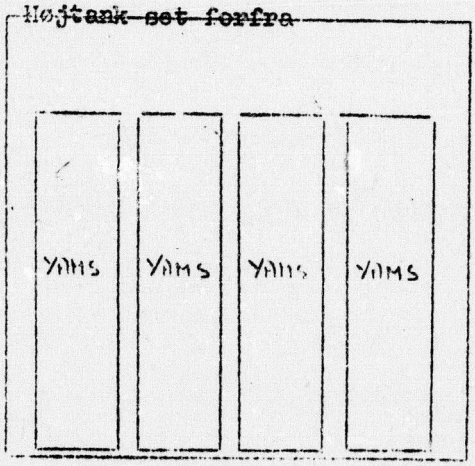

Kartonerne blev stuvet på krydsdunnage med ca. 3 fods afstand til skibssider og bulkheads, samt med 3 langskibs og 1 tværskibs luftkanal af 1 fods bredde for hvert lag kartoner, og med rigelig dunnage imellem. Dunnagen gik helt til skibssider og bulkheads for at støtte kartonerne.

P.A. Larsen
1.styrmand
M/S"Dagny Skou"

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being examined, before a notary public other than the notary public before whom this examination was begun.

IT IS FURTHER STIPULATED AND AGREED, that the signing, filing and certification of the original of this deposition is waived.

* * *

PAUL AKSEL LARSEN, having first been duly sworn before a notary public of the State of New York, hereby testified as follows:

EXAMINATION BY MR. D'ORCHIS:

Q Could you please state your full name and address, for the record?

A My name is Paul Aksel Larsen and I live in Elefantens Kvarter, which is Elephants Quarters, 10/c, Albertslund, Copenhagen, Denmark.

Q Mr. Larsen, if you have any problems understanding the questions asked by counsel in this deposition, please do not hesitate to ask the question either be repeated or an explanation of the wordage used.

A I will.

Q When did you begin sailing?

A I start sailing in '52.

Q In what capacity?

* *

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A The first of January, 1974 and I have been there since.

Q What was the first vessel you sailed aboard with Ove Skou?

A It was the METTE SKOU, the one I'm with now.

Q What was your capacity on board that vessel?

A I was mate. I signed on the METTE SKOU the third of May, '74 in Liverpool.

Q Do you recall a shipment of yams carried from Cartagena to New York in July of 1974?

A I do.

Q June and July?

A Yes.

Q The voyage that that involved, do you recall at what port that voyage started at?

A We started loading in Tumaco, Columbia.

Q This voyage in question started in Tumaco?

A Yes. Loading timber.

Q Where did the vessel proceed to after Tumaco?

A Buenaventura.

Q Do you recall what the vessel loaded at Buenaventura?

A Coffee and general cargo.

Q I show you this document, Mr. Larsen, and

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ask you whether this was the stowage plan for the voyage which we are concerned with here?

A That is correct. It is made by myself.

Q Is that an accurate Xerox as best as you can recollect?

A It is.

Q When the vessel had completed loading at Buenaventura, what spaces were left for loading cargo at future ports?

A As far as I remember, it was number one lower tween deck and number one upper tween deck and number five tween deck and the deep tanks.

Q How many hatches were there aboard the METTE SKOU?

A Five hatches.

Q Do you recall the size of the METTE SKOU?

A The METTE SKOU, the dead weight is about 8000 tons, the dead weight.

Q Do you recall her length off hand?

A Around 127, 28 meters.

Q Did she have a midship house?

A Midship house.

Q And an aft house?

A Yes, we have a poop house for the crew.

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Q When was the first time you were informed with regard to the shipment of yams to be carried aboard?

A In Buenaventura.

Q By whom were you informed?

A The ship's clerk. The man was Gooseman.

Q When you say the ship's clerk --

A He was the one who did the service between the Grancolumbiana and the ship.

Q Was he employed by Grancolumbiana?

A Yes.

Q And Grancolumbiana was the charterer of the vessel?

A Grancolumbiana was the charterer, yes.

Q Had you already been informed previous to Buenaventura of other cargo to be carried and loaded at Cartagena?

A Yes. We were informed about the tobacco.

Q What time were you informed about the tobacco?

A Before sailing.

Q Before sailing from Buenaventura?

A Yes.

Q Had you had notice of the tobacco prior to arriving at Buenaventura?

A No.

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Q Were you informed by Mr. Gooseman where the charterer intended to stow the tobacco and the yams at Cartagena?

A No.

Q Do you know if a pre-stowage plan was prepared?

A It was not.

Q Do you recall the date that the vessel arrived at Cartagena?

A Was it the 19th we arrived? We took bunker before we arrived at the anchorage.

Q Let me show you these two deck logs and ask you if you can identify them.

A That's correct. We arrived the anchorage the 19th 0740 dropped anchor.

MR. CLARK: Is that June 19th?

THE WITNESS: June 19th.

Q Mr. Larsen, before we go further, are those the original log books prepared aboard the METTE SKOU for the voyage?

A Yes.

Q Is your signature on those?

A It is my signature.

Q The log books you're holding covers what dates,

* * *

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prepared and which is an accurate copy thereof, I would like to have marked as defendant Ove Skou's exhibit C for identification.

(Document referred to so marked Defendant Ove Skou's Exhibit C for Identification, as of this date.)

Q Please refer to defendant's exhibit C for identification if it will help clarify your recollection of the loading and stowing events aboard the METTE SKOU.

After arrival at Cartagena, were you contacted by the charterer's agent with regard to the stowage of goods at Cartagena?

MR. McCONNELL: I object to the form.

MR. GIALLORENZI: I join in the objection.

Q Were you contacted by the charterer's agent at Cartagena?

A Yes.

Q On what date were you contacted?

A It was on the day on arrival.

Q Do you recall the name of the gentleman who you spoke to?

A No.

Q Did he identify himself as being with the charterer's company?

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MR. GIALLORENZI: I object to the form of that question.

Q Did this gentleman identify himself?

A Yes.

Q How did he so identify himself?

A By coming on board, showing his card to the captain and bringing the ship's mail and the loading prospects.

Q Did you discuss the stowage of goods to be loaded at Cartagena with him?

A I did not, but the captain did.

Q Did the captain thereafter confer with you regarding stowage at Cartagena?

A Yes.

Q What did the captain say to you?

A We are going to load tobacco in number one and number five tween decks, and the yams in the deep tanks.

Q Did he say --

MR. McCONNELL: I object.

MR. GIALLORENZI: I object to the question.

Q Did the captain provide you with a copy of a proposed stowage plan as a result of his conversations with the --

MR. GIALLORENZI: I object to this question.

How do you know that he first of all gave him a prospective loading plan?

Q Did you receive a stowage plan from the captain at Cartagena?

A No.

Q Were you thereafter contacted by anyone else with regard to stowage aboard the vessel of the yams?

A Prior to loading, the representative of the shipper, he came down to me on the weather deck, hatch number three and asked me is this the only space you have for yams? And I could only say yes. And then --

Q Do you recall the name of the representative of the shipper?

A No.

Q Did you thereafter take the representative of the shipper into the hold, into the deep tanks of the ship?

MR. GIALLORENZI: I object to the form of the question.

MR. McCONNELL: I join in the objection.

MR. GIALLORENZI: It's a leading question.

MR. D'ORCHIS: I'm trying to push it along. We have got a foreign witness here.

MR. GIALLORENZI: I know. Ask him what he

did with the representative.

MR. D'ORCHIS: I'm trying to push it along because it's late.

Q What did you thereafter do with the representative of the shipper?

A I took that representative with me to the tween deck and showed him the deep tanks, and I showed him where the ventilation was, where the input and where the output was. And I showed him the push buttons and I pressed them in the deck house, the forward deck house, and he saw that the light was on and I took him to the ventilation itself and the fan was on and the air came in and he assured himself that the air came out.

MR. McCONNELL: Please read back the answer.

(Whereupon, the answer was read back by the reporter.)

Q Did the shipper's representative say anything to you as a result of observing the deep tanks and the operation of the ventilation system?

MR. McCONNELL: Objection.

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Did you thereafter receive instructions from the shipper to proceed with the loading of the yams?

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MR. McCONNELL: I object to the form of that question.

Why don't you ask him whether he receives his instructions to load from the owners, his captain or from people who work off the pier.

MR. D'ORCHIS: The question of who he received the orders from is perhaps a legal question, but whether he was told by the shipper's representative to go ahead with the loading is something --

MR. McCONNELL: You're asking a form of an objectionable question in another fashion, and it's totally objectionable.

Q Mr. Larsen, did you thereafter receive instructions from anyone to proceed with the loading of the yams into the deep tanks?

A No. Just went on. When the shipper and the Grancolumbiana representative, they had agreed that the yams --

MR. McCONNELL: I object to that response.

MR. GIALLORENZI: I object to it, too.

MR. McCONNELL: Please instruct the witness to confine himself to the answers to the question.

MR. D'ORCHIS: Please just answer my

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questions, Mr. Larsen.

Q Did the captain see you after your meeting with the shipper's representative about --

MR. GIALLORENZI: Just a moment. Do we have a partially asked question or is that answer stricken out because of the objection? The one before this question that's now been propounded to the witness.

MR. D'ORCHIS: Please read the question back, Mr. Reporter.

(Whereupon, the record was read back by the reporter.)

MR. GIALLORENZI: I objected to it.

MR. McCONNELL: I move to strike all the answer after the word no.

MR. GIALLORENZI: I move to strike the entire answer after the word no.

MR. D'ORCHIS: Note my objection to counsel's proposal.

Q Mr. Larsen, did you confer with the captain subsequent to the shipper's representative coming aboard with regard to stowage of the yams?

A Please repeat.

Q Did you talk with the captain about stowage

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of the yams after you conferred or spoke with the shipper's representative?

A Yes. The captain told me the yams go --

MR. McCONNELL: I object to the answer.

Q What did the captain tell you?

A The yams have to go into the deep tank.

MR. McCONNELL: I object to the answer as to what the captain told him.

MR. GIALLORENZI: I join in that objection.

MR. D'ORCHIS: I just have to bring in the captain. If we are going to talk about receiving orders from the captain, and we are not going to allow the orders to come in, I will have to pull in the captain on this. I think you're being ridiculous on this.

Q Were the yams thereafter loaded into the deep tanks of the vessel?

A Yes.

Q Did you receive any objection with regards to the stowage of the yams in the deep tanks during the stowage?

A No.

Q And after the stowage?

A No.

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Q Did anyone from either the shipper or the charterer inspect the stowage of the yams during or after the stowage?

A The shipper's representative was on the tween deck all the time.

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Do you know if the agent for the charterer was aboard the vessel during the stowage of the yams?

A That, I don't remember.

Q Do you recall if the agent for the charterer came aboard the vessel after the stowage of the yams prior to the sailing of the vessel?

A He came on board prior to the vessel sailing, yes.

Q Do you know if he went down into the deep tanks and inspected --

MR. GIALLORENZI: I object to the form of the question. Ask him what he did.

MR. D'ORCHIS: I'm going to object to counsel's objection. I can't. That's too general a question to ask. It has to be narrowed beyond that. He could have had lunch, he could have had dinner.

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MR. GIALLORENZI: Ask him that. Ask him what he did.

Q What did the charterer's representative do with regard to the stowage of the yams during his trip on board the vessel, during his coming on board the vessel after the stowage of the yams?

A He was -- he agreed with the stowage and he gave the papers to the captain and we left in the middle of the night. That's all.

Q Do you know if the charterer's agent inspected the stow?

A He did not.

Q Did you speak to the charterer's agent after the yams were loaded, personally?

A Yes, but we were not discussing the stowage of the yams. Just normal conversation about departure and about the other loading.

Q Mr. Larsen, can you describe the ventilation system that is provided to the deep tanks in the METTE SKOU at the time of this shipment?

A Yes. For example, if you -- this could be exactly the same as the deep tank (indicating).

Q You're referring to this room?

A Yes.

Q But not the size of this room?

A Not the size. I'm saying a deep tank is about 15,000 cubic feet, and the air inlet come through trunk and we have mechanical ventilation and the air comes up from the weather deck. It's fresh air pushed down coming out just over the ceiling in the deep tank.

Q That's forced by electrical motor?

A That's forced by an electrical motor and comes out one foot, two feet over the ceiling. And the outlet -- if this is the bulkhead and the windows are the ship's side, then the outlet is on top of the tank against the ship's side.

Q Can you describe how the air is exhausted through this outlet.

A It's exhausted through a trunk coming out in the sidewalks midship.

Q So it comes out on the deck?

A It comes out over deck.

Q Over deck?

A Over deck.

Q And it comes out --

A In the sidewalks.

Q That's the enclosed passageway?

A In the passage between fore deck and after

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deck. This passage goes the side of the super structure.

Q Do you recall how the diameter, the width of that trunk for the exhaust is?

A No. No.

Q How about the diameter of the [illegible]et pipe, the pipe that blows the air into that deep tank?

A Don't kill me, but I think it's just about one foot by two feet.

Q It's a square pipe?

A Yes.

Q Where are the ventilator motors located?

A On the fore part of the super structure.

Q Now, are the deep tanks, are there two deep tanks?

A Two deep tanks.

Q One on port side and one on starboard side?

A Yes.

Q Is the ventilation system the same for both deep tanks?

A The same for both. There are two deep tanks that have their own ventilator.

Q Do you recall or do you remember approximately what the time period is for replenishing the air within a single deep tank aboard the METTE SKOU when the

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ventilation system is in operation?

A I don't, but I think it's between 20 or 30 times an hour for an empty tank.

Q If it was filled with the yams in question, it would take less time than that?

A (No response.)

Q Do you know how much time it would take with the yams in the deep tank?

A No, I don't.

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Mr. Larsen, do you know if it would take less time or more time for the air to recirculate in the deep tanks if the tanks were filled to the capacity that they were when the yams were carried?

A No. I don't know.

Q Did you personally inspect the deep tanks after the yams were stowed?

A I did. I inspect the deep tanks everyday until discharge.

Q At the port of Cartagena --

A Yes.

Q (Continuing) -- after the stevedores completed loading --

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A Yes.

Q (Continuing) -- were you satisfied with the stow?

A I was satisfied, yes.

Q What were the yams packaged in when they came aboard the vessel?

A They were in brown cartons with only -- with two holes for the fingers so they could take one up.

Q Was there any ventilation into those boxes besides the hand holes, if you recall?

A No, there was no ventilation; and as far as I remember, I opened some of them to see --

MR. McCONNELL: I object.

Q Did you open up the cartons of yams?

A Yes.

Q What did you see inside the cartons?

A Yams. Sweet potatoes wrapped in white paper.

Q Did you inspect these cartons of the yams prior to loading or subsequent to loading?

A Prior to loading, and the captain inspected this as well as also during loading.

Q How many boxes would you say you looked at, if you can recall?

A Ten, fifteen, twenty cartons. I can't remember.

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Q Were the cartons palletized?

A No. Loose cartons.

Q Can you describe for us how the cartons were stowed in the deep tanks?

A They were stowed -- I make the plan, and they were stowed on crossed dunnage as we call it.

Q I show you this sketch and ask if you can identify it?

A That's right. It's made by me.

Q Is that also your signature on the right hand bottom?

A Yes, that's my signature made in Yokohama.

Q Is that sketch of the stowage of the yams in question in the METTE SKOU?

A It is correct.

MR. D'ORCHIS: I'd like to have this sketch marked as defendant's exhibit D for identification.

MR. GIALLORENZI: No objection.

MR. McCONNELL: No objection.

MR. CLARK: I have no objection.

(Sketch referred to so marked Defendant Ove Skou's Exhibit D for Identification, of this date.)

Q Mr. Larsen, on this sketch marked as defendant's exhibit D for identification, could you please

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indicate where the intake and where the outlet vents are located?

A Yes.

MR. GIALLORENZI: Off the record.

(Discussion off the record.)

A (Continuing) This is starboard deep tank. Here against the bulkhead the air goes in, and the opposite on top, out.

MR. McCONNELL: May I see that now?

MR. D'ORCHIS: Yes.

Q Now, with regard to this sketch, Mr. Larsen, the tiers of cartons of yams, which you show four tiers in this sketch with regard to the view from the front, were the boxes of yams separated by dunnage?

A Each layer was separated by what we call flat dunnage.

Q When you say each layer, how deep is a layer?

A One carton.

Q What are the dimensions of a carton, if you can recall?

A I think the cartons was about two cubic feet.

Q Was each tier one carton wide?

A Yes. It's about one foot high.

Q I'm talking about width, the width of these

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tiers.

A That I can't remember. I can't remember how many cartons in every tier.

Q So on top of the first layer of cartons there was dunnage?

A First --

Q Can you describe what kind of dunnaging was used?

A It was wood.

Q What was the width of the dunnage?

A Approximately one inch by four, five inches, and the length depends on --

Q Do you know who provided the dunnage?

A Grancolumbiana provide. We had it on board actually.

Q This dunnage was provided between, on top of each layer of boxes?

A Correct.

Q What was the distance between the outside of the tiers of boxes and the bulkhead?

A About three feet.

Q Is that true on each side of the bulkhead?

A All four sides.

Q That's true for both the port and starboard

deep tanks?

A Yes.

Q Between each of the tiers I notice that there is an aisle.

A Yes. We had one longitudinal aisle and three athwartships. All of them was about one feet wide.

Q That aisle was clear from the floor to the ceiling?

A Yes. Broken once in a while of the flat dunnage.

Q How high did the tiers of yams reach within the deep tank?

A As far as I remember, it's between halfway and two thirds up. I don't remember actually. It's two years ago.

MR. McCONNELL: Off the record.

(Discussion off the record.)

Read it back, please.

(Whereupon, the record was read back by the reporter.)

Q Mr. Larsen, can you recall in terms of feet or meters how high the tiers were from the floor to the top, to the top tier?

A No.

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Q This sketch which you made and identified as defendant's exhibit D for identification, were these intended to be precise calculations of the proportions of the stow?

A It's not precisely, no.

Q Was there access for a person to go down into the deep tanks after the yams were stowed?

A Yes.

Q How was that provided?

A Through the manholes to the tanks.

Q How many manholes were there in each tank?

A One per tank.

Q Is the manhole separate from the discharge outlet?

A Yes.

Q Do you know if those manhole covers were left open during the voyage?

A They were left open.

Q Where does the manhole cover lead into, the lower hold of --

A The manhole leads from the tween deck to the tank.

Q The tween deck of which hold?

A Hold number three.

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Q Is that a ladder?

A There is a fixed ladder.

Q This is true in both port and starboard deep tanks?

A Yes.

Q Was the stow in the starboard and port deep tanks identical?

A Yes, [illegible] and half.

Q They were both identical to this sketch that you have drawn?

A Yes.

Q Subsequent to the vessel sailing from Cartagena, did you inspect the holds?

A Yes.

Q What were the times that you did this; was it on a daily basis, weekly basis?

A It was a daily basis.

Q What was the purpose of going down into the deep tanks?

A To inspect cargo. If it's still in good shape and in that position in which it was stowed.

Q Now, did the stowage of the yams have any bad effect on the stability of the vessel--

A No.

* * *

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MR. D'ORCHIS: Let the record show that was provided by Mr. McConnell.

BY MR. D'ORCHIS:

Q Do you recall after having taken these temperatures and dew point readings whether the temperatures within the deep tanks exceeded the outside air temperatures during the voyage?

A No.

Q Would a recording or notation have been made by yourself if such excessive temperatures had been recorded by yourself?

MR. McCONNELL: I object to that question, to the form of that question. It's calling for --

Q Would procedure aboard the vessel have required you to note if the temperatures inside the deep tanks exceeded outside air temperatures?

A I would have noted if the temperatures --

MR. McCONNELL: I object.

A (Continuing) -- have gone up.

Q Just the general procedure aboard the vessel.

A The general procedure is that the chief officer take care of that on his discretion.

Q What were your procedures in events where the inside temperatures exceeded outside temperatures?

A Two times a day when I end my watch in the morning 8:00 o'clock and when just before I start the same day in the afternoon, just before 1600 hours.

Q But would your procedures have required you to note that the inside temperatures exceeded the outside temperatures if they had?

A Yes.

Q Mr. Larsen, if you care to refer to the log books, do you recall ever having made a notation that the inside temperatures in the deep tanks exceeded the outside temperatures?

A For example, prior to loading, temperatures in holds two and three, 24 degrees. Outside 27. No ventilation.

Q But you do not --

A That was prior.

Q With regard to my question: You did not make any notations in the log books which --

MR. McCONNELL: Where does that entry appear, please?

MR. GIALLORENZI: The date, Mr. Larsen, of that entry.

THE WITNESS: That appeared prior to loading.

MR. GIALLORENZI: The date. Can you fix

the date?

THE WITNESS: The 18th.

MR. GIALLORENZI: Of June?

THE WITNESS: Of June, yes.

MR. GIALLORENZI: Thank you.

Q Do you recall or do you see any notations by yourself that the temperatures in the deep tanks exceeded the outside air temperatures for the entire voyage?

A No.

Q How were the ventilators operated during the entire voyage?

A For the deep tanks the ventilation was on all the time.

Q That's 24 hours?

A 24 hours a day.

Q That's forced ventilation that was on?

A Forced ventilation.

Q Would a notation have been made by yourself in the log book if the humidity within the deep tanks exceeded the outside humidity?

A I would have made an entry, yes.

Q After having reviewed the deck logs or from your own recollection, do you know whether any notations

were made during the entire voyage that the humidity within the deep tanks exceeded the outside humidity?

A I made some entry at the beginning of the voyage, but not the whole entire voyage.

Q Can you give us the dates of those entries?

A Yes. The first entry was the 22nd, dew point outside 26, inside dew point 24 degrees. No ventilation. That was 850. 0850, the time. The same day 1600 hours, dew point outside 22 degrees, inside 24, full ventilation all compartments. The next day, the 23rd dew point outside 25, inside 24, no ventilation.

Q No ventilation, does that refer to ventilation--

A That's right, for the compartment.

Q When you say ventilation --

A That's for the holds, but I said before the deep tanks was ventilated all the time.

Q Without exception?

A Without exception.

Q Mr. Larsen, on what date did the METTE SKOU arrive in New York?

A We arrived New York -- we arrived New York the first of July, 0715, New York Army Base Terminal, pier number three, south side.

Q From the date that you departed Cartagena

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Larsen

until the day of arrival at New York, it is your testimony you went down into the deep tanks on each day?

A Yes.

Q To inspect?

A Yes.

Q Had you observed anything with regard to the condition of the yams during those inspections?

A No.

Q What condition would you say that they were in?

A I can't tell because I did not open the cartons.

Q You did not open the cartons?

A No.

Q Did you notice odors?

A No.

Q What was the temperature in New York at the time that the vessel arrived? You can refer to the log book if it will help your recollection.

A Yes. The second, 22. The third, 23.

Q These are in centigrade temperatures?

A This is centigrade and taken in the early morning.

Q Were temperatures taken at noon time on the

first and on the second?

A No.

Q Only one temperature recording was made on each day?

A Yes. The usual way to do it is that the mate on duty every morning, 6:00, 7:00 o'clock takes the temperature, the pressure, if it's cloudy, rainy, foggy, and he makes the daily entry at 7:00 o'clock every morning when we are in port.

Q After the vessel arrived at New York, what steps did you take with regard to the discharge of the yams?

A Immediately upon arrival, I asked the Gran-columbiana representative -- actually his name is -- I've forgotten the name. The port captain.

MR. GIALLORENZI: ~~Hazelton~~ Sebagco BJA?

THE WITNESS: ~~Captain Hazelton~~ Mister Sebagco BJA, correct.

A (Continuing) I asked him to discharge the yams immediately because it's fruit, but he denied it. The yams was discharged the second day.

Q The yams were not discharged until July the 2nd?

A Correct.

Q How many hours was the vessel in port until

the first box of yams was discharged?

A About 24 hours. They started discharge next morning.

Q What was the basis of your request to the port captain to begin immediate discharge of the yams?

A It's normal. You want to get rid of fruit. It's a delicate cargo.

Q Were there any weather considerations?

A During the day it was very hot.

Q This is true for both July the first and the days after that?

A Yes.

Q Did you inspect the yams prior to their being discharged from the vessel at New York?

A I did not.

Q Did you see or observe anyone else inspect the yams prior to their discharge?

A The Grancolumbiana surveyor inspected the entire cargo.

Q On what day was that?

A It was on the first.

Q Do you know whether that was in the morning or the afternoon?

A It was after arriving in the morning. No

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Larsen 38

comments.

Q Did you make any recording with regard to the failure to discharge the yams on July the first, 1974?

A Yes, but unfortunately, there is a little mistake here because I wrote -- I wrote -- we have another one where we write with normal pencil.

Q The rough log book?

A The rough log, and there I wrote that Granco[illegible]iana representative refused to discharge the actual cargo, the yams, but here --

Q You're referring now to the smooth log book?

A Yes. But here is an entry.

Q Is this a translation?

A Yes. At --

MR. GIALLORENZI: The page?

THE WITNESS: The first of July just after arrival.

A (Continuing) At works beginning the stevedores was requested to discharge from the deep tanks. This was not done.

MR. McCONNELL: Off the record.

(Discussion off the record.)

MR. D'ORCHIS: Let the record show Mr. Larsen just read the bottom five lines on the right hand

page of one in the deck log identified as defendant's exhibit B for identification.

MR. GIALLORENZI: May I see that, please?

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Start from here.

A Spotted on the bridge house. The workers use hooks on the coffee bags. Claimed without results.

Q And then begins the line?

A And then begins -- at works beginning stevedores was requested to discharge from deep tanks. This was refused. This was not done.

Q Continue reading if there is anymore after that.

A No more.

Q That goes down to the very last word on the very last line?

A This is just mean the first of July. Ordinary seaman Piere minus four hours.

Q Did you personally request the Grancolumbiana agent to begin the discharge of the yams?

A I did.

Q Did you make a second request for the discharge of the yams?

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A I did not.

Q On the following day, were any demands made by yourself for beginning the discharge of the yams?

A No, because they started to discharge the yams right away.

Q Did you see where the yams were placed after they were discharged from the vessel?

A Yes. They were placed in a locker in the shed, inside the shed.

Q That's a shed on the pier?

A That's a shed on the pier, yes.

Q Is that within view of the vessel?

A Yes.

Q Is that a metal shed, if you can recall?

A How can I explain that? The side of that locker is the shed's side, and the rest of them is just framework of timber.

Q Is there a roof on the shed?

A Yes.

Q Did you observe the stowage of the yams in the shed?

A The yams were stowed in one block.

Q Yes or no?

A Yes.

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Q Please explain how the yams were stowed in the shed.

A The yams were just stowed in one block, one big block.

Q Did you note if dunnage was used?

A No dunnage used.

Q Was there any means of forced ventilation provided?

A No.

Q Do you recall whether any of the yams were picked up by truck while you were aboard the vessel in New York?

A No.

Q Were any protests made by yourself to the stevedores or to the charterer's agent with regard to the stowage of the yams in the pier shed?

A We spoke about it and I told them --

Q Spoke about it with whom?

A With the Grancolumbiana representative and also with the surveyor, the Grancolumbiana surveyor. We spoke about it and I told him you placed the cargo there without ventilation in a very hot shed. What can I do, he said?

Q Did you take readings of the temperatures in

* * *

point.

Q You mentioned drawings of the vessel. What drawings were you referring to with respect to the air changes?

A In Yokohama I could not remember how many times the air was changed an hour, and by that I mean you could get the information from the ship's drawings which are in the possession of the owners in Copenhagen.

Q How is it that you remembered in Yokohama that the vessel sailed on June 21st at about 3:30 in the morning for Jacksonville?

A I had referred to my overtime sheet again.

Q In the letter you mention that at no time did the temperature reading in the hold or deep tanks rise above the outdoor temperatures, is that correct?

A That's correct.

Q Previously you testified that they did on the 22nd and the 23rd?

A Yes, but I don't know if you remember that I was talking about the compartments in common.

Q In the letter you're referring to the holds in common and the deep tanks, isn't that correct?

MR. D'ORCHIS: Mr. Larsen, if you'd like to refer to the letter to see what you're talking

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Larsen 55

about, you're welcome to it.

I'd like the question re-read to the witness.

(Whereupon, the question was read back by the reporter.)

A No. In this letter I refer to temperatures of holds and deep tanks and at no time did these arise --

Q Mr. Larsen, what was your practice with respect to ventilation in the common holds?

A In the common holds where we had coffee, we ventilate if the outdoor humidity is lower than the hold humidity.

Q Would that have been also true of the deep tanks?

A No. The deep tanks we ventilated all the way -- all the voyage 24 hours a day. I don't know if you know it, but fruit develops co2. They develop heat. They develop alot of things and we keep the ventilation on to take that away, because humidity does not effect that too much, not the same as coffee.

Q Do coffee beans develop heat and co2 or other gases?

A You caught me. I don't know.

Q Where in the log book does it say that the ventilation in the deep tanks was on continuously throughout

* * *

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Larsen 58

bulkhead is here and the manhole is --

Q You mean in that bottom drawing that's looking forward?

A Yes, and you can see the same from the back. From front and back. Here you see it from behind. The ventilation shaft is here and the manhole just beside it and the outlet up here (indicating).

Q Now, you mentioned that you went down into the deep tanks prior to loading the cargo at Cartagena?

A Yes.

Q In what condition were the deep tanks?

A Good condition.

Q Was there anything wrong with the cargo battens?

MR. GIALLORENZI: I object to the form of the question. You're assuming there is something wrong. Ask him what was the condition of it.

Q What was the condition of the cargo battens?

A There are no cargo battens.

Q What was the condition of the dunnage on the ceilings?

A It was wooden ceilings. A good cross dunnage.

Q When you say good, would you explain what you mean?

DEFENDANT LOTA EXHIBIT P

A Normal timber, not broken timber. In such a condition that it could not harm the cargo.

Q Have you had any repairs done to the ceilings from the time you came aboard in Liverpool?

A No.

Q What was the condition of the ladders?

A Good.

Q From the manhole covers?

A Good.

Q Was there any rust on the bulkhead?

A Yes.

Q What was the condition of the wood sheathing at the bottom of the tank?

A It was good.

Q I have here the on hire survey report made by the charterers at the time the charter commenced which was, as I understand it, at the time that you came aboard the vessel?

A Yes.

Q Which indicates that the access ladders to both deep tanks were buckled. Do you have any comment about that?

A No.

Q The survey shows that the wood sheathing at

the tank bottom is split and holed in places. Do you recollect that?

A No.

MR. GIALLORENZI: I think you ought to let the record indicate that that just applies to the port deep tank. The starboard deep tank says it only holed.

MR. McCONNELL: Thank you, Mr. Giallorenzi. That's referring to the wood sheathing.

MR. GIALLORENZI: Right.

Q If you turned the ventilation off in the common holds, whenever the dew point of the common holds was below the dew point of the outside air, why would you not have done the same thing in the deep tanks?

A Knock it off and put it on again?

Q Yes.

MR. D'ORCHIS: Would you like to have the question re-read?

(Whereupon, the question was read back by the reporter.)

A When you carry fruit, as I said before, it develops some things which have to be taken away, and that includes also develops heat. So if you not have ventilation running the whole time, in a few hours we

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have I don't know how many degrees.

Q Isn't it a fact, Mr. Larsen, that you kept the ventilation on when you kept it on because the temperatures in the deep tanks were above the temperatures, dew point temperatures of the outside air at all times?

MR. D'ORCHIS: I object to that question, but I will allow the witness to go ahead and answer it.

A No.

Q Who made the decision to stow the tobacco in the number one and number five and the yams in the number three deep tanks, as far as you know?

A The captain and I.

Q Would you have stowed the tobacco in the number three deep tanks?

A Yes. But if I have carried tobacco in number one top deck, number one lower tween deck and number five tween deck. That was exactly the space for the tobacco. If I have put some tobacco in the deep tanks, you would not be able to carry the yams.

Q Did you decide to carry the yams in the deep tanks because the cargo fitted there better than in the number one and number five hatches?

A I did not decide to carry the yams there. It

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Larsen

was the charterer and the shipper who wanted it there.

Q You previously said that it was the captain and your decision to stow the yams in the number three deep tanks?

A No. I said that it was the captain and my plan to carry the tobacco there and tobacco here and what was left, the deep tanks which the charterer and the shipper accepted for yams.

Q Did you think that the deep tanks were a fit and proper place to carry the yams?

A Yes.

Q From whom do you take your orders with respect to loading and stowage?

MR. D'ORCHIS: I object to that question.

Go ahead and answer it.

MR. GIALLORENZI: I join in the objection.

A The normal procedure is that --

MR. GIALLORENZI: Not the normal procedure.

Are you talking about this case?

MR. McCONNELL: I will rephrase the question.

Q In this case, with respect to these yams, did you receive your orders to load and stow the yams from the captain of the vessel?

A Yes.

* * *

DEFENDANT FLOTA EXHIBIT P

Q Did he receive documents following the stowage?

A That I don't know. He got nothing from me.

Q Did anybody give you anything with respect to the shipment, any instructions?

A No.

Q With respect to the shipment?

A No.

Q Any letters?

A No.

MR. McCONNELL: Off the record.

(Discussion off the record.)

Q Mr. Larsen, when did you arrive in New York?

A We arrived yesterday at 7:30.

Q In the morning?

A In the morning.

Q What did you do all day?

A I discharged and loading the vessel.

Q When are you leaving?

A Tomorrow around 1600 hours.

Q How many cubic feet are there in the port and starboard deep tanks? Take them together.

A In the METTE SKOU?

Q Yes, on the METTE SKOU.

* * *

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Larsen 66

A I can't remember how wide, how big it is. When you have the plan, the width and length of them are indicated. I can't remember. Only the height.

Q How many tiers of cartons were there between each layer of the plywood dunnage?

A There was dunnage between every carton, every layer of cartons.

Q What kind of dunnage was that?

A That was this, what we call flat dunnage one by four, five inches, then the length.

Q How about the plywood?

A Plywood?

Q Yes.

A The plywood was not used in the deep tanks.

Q I have a report of survey made the day the vessel arrived which states that there was plywood dunnage between every third tier. Does that help refresh your recollection?

A If he had seen some of the plywood we have, be between the coffee.

Q No. He specifically refers to the -- with respect to the deep tanks.

MR. D'ORCHIS: Can you point out where in the survey report that statement is made?

* * *

DEFENDANT FLOTA EXHIBIT P
Larsen 68

the deep tank. So he haven't been down there, I can state that.

MR. GIALLORENZI: Off the record.

(Discussion off the record.)

Q How many pieces of wooden dunnage of the kind that you have described were used, one inch by four or five inches by whatever length were used between each tier?

MR. D'ORCHIS: If you can remember.

A I can't remember how much dunnage was used.

Q Did you have any plywood platforms aboard the vessel?

A No.

Q Did you have any plywood dunnage aboard the vessel?

A Yes.

Q Was that plywood dunnage used for the stowage of coffee?

A Yes.

Q Which cargo was loaded first in Cartagena, the tobacco or the yams?

A No. We load the same time, tobacco and yams.

Q Was there any plywood dunnage remaining, to your recollection, at the time the vessel left

Buenaventura?

A Not as I remember. Not as far as I remember, because the ship was full.

Q Were the wood dunnage pieces which you have described, one inch by four to five inches, laid on the four to five inch side or on the one inch side?

A It was laid down on the flat side.

Q How much space was there between cartons?

MR. D'ORCHIS: If you don't understand the question --

THE WITNESS: I understand it.

A Between the layers there were a distance of the dunnage of course, but for every layer of the cartons they were together except for these ventilation canals we have built.

Q In other words, the sides of the boxes --

A Were together.

Q (Continuing) -- were laid together?

A Yes.

Q Why did you determine not to put any dunnage between the boxes sideways?

A I have never seen that being done except in freezer hatches when you have this up and down ventilation.

DEFENDANT FLOTA EXHIBIT P

Q Have you seen the boxes on the pier before they were loaded aboard, the boxes of yams?

A Yes.

Q Have you noticed the ventilation holes in the sides?

A I did not think it was ventilation holes. It was just holes so you can grip, take the boxes.

Q Does that mean that air doesn't go through it when you don't have your hand in it?

A What can I know about that? I don't know.

Q Well, wouldn't the handle hole serve a dual purpose?

A In my opinion, these holes were too small for ventilation.

Q Have you ever carried yams before?

A Not that kind of yams.

Q Did you seek any advice from anyone respecting the stowage of the yams?

A No.

Q Would you describe the machinary which was used to operate the fans that you mentioned before?

A I showed it to -- I showed it to him. He can see with his own eyes. It was electrical motor.

Q Would you describe it?

DEFENDANT FLOTA EXHIBIT P
Larsen 71

A I did not describe.

Q I say would you describe it for us?

A Oh, yes. I will, certainly. It's electrical motor and it's hanging in some iron bars.

Q Where is it located?

A On weather deck in front of the super structure.

Q Which hatches does that machine service?

A Deep tanks. Only the deep tanks. One per tank.

Q You mentioned a trunk?

A Yes. Which runs from -- from that.

Q From that place down to the deep tanks?

A Yes.

Q How large is the access opening into the deep tank from that trunk or what is the size of the access opening?

A I have mentioned it before. It was about one by two, three feet.

Q Is it square or rectangular?

A Rectangular.

Q I take it there was one of these in each of the deep tanks?

A Yes.

DEFENDANT FLOTA EXHIBIT P
Larsen

Q Where does the machine draw the air which it pumps or fans into the deep tanks?

A From the weather deck just in front of the super structure.

Q You mentioned another opening into those deep tanks. Is there any other opening into the deep tanks?

A Yes. The manhole and the tank through which we load and discharge. These are closed and buttoned down with screws.

Q The manhole is closed down?

A As well as the lids.

Q As well as the tank lids?

A Yes. With screws.

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Is there any other opening?

A No, there are only four openings. One inlet, one outlet, one tank lid, one manhole and a sounding pipe.

Q Why is there a sounding pipe?

A Because these tanks -- we also carry liquid bulk cargo in these deep tanks.

Q What had been the previous cargo carried in these deep tanks?

DEFENDANT FLOTA EXHIBIT P
Larsen 73

A We carried, what was it? Drums. General cargo.

Q What was the size of the exhaust hole from each --

A The same as the inlet.

MR. GIALLORENZI: Why don't you wait, Mr. Larsen, until he finishes.

MR. McCONNELL: Repeat the question.

(Whereupon, the question was read back by the reporter.)

Q (Continuing) -- deep tank?

A The same size as the inlet, one by two, three feet.

Q Would it surprise you to learn that they're six inches?

A Six inches?

Q Rather than one to two or three feet?

A That source you've got that --

Q How big are they with your hands, show me with your hands?

A That big and that big (indicating).

Q Each one?

A Each one.

Q How big is the opening on the deck?

* * *

DEFENDANT FLOTA EXHIBIT P
Larsen

Q Is there anything then inside the vent?

A You have steel frames to protect any water to come in.

Q Any water?

A Yes. These steel frames, they are placed in such a way to keep the water away if anything should happen, the ship is chipping water and the lid is open.

Q Is there any wire mesh also?

A Wire?

Q Wire mesh?

A No.

Q Do you know what I mean by wire mesh?

A Yes. You mean that to tighten down, to button up the lid.

Q No.

MR. D'ORCHIS: Like this, a screen.

THE WITNESS: Oh, no. We don't have that.

Q What would prevent rags and debris from going down into that, in through that exit hatch?

A These steel frames.

Q What are the openings between the steel frames?

A Half an inch. Half an inch.

MR. D'ORCHIS: Off the record.

* * *

testified to and it's irrelevant.

Off the record.

(Discussion off the record.)

Q Was the ventilation in the common holds turned on any more often than is shown in the log book?

A Yes.

Q When was that?

A When the dew points in the cargo holds were higher than the dew points outside.

Q Those were the only times that the ventilators were turned on?

A In the cargo holds, yes.

Q That was on the 22nd and 23rd of the month?

A And up to arrival in New York.

Q Would you please turn to the entry for the 23rd of June in exhibit A?

A Yes.

Q At the bottom of the page on the right hand side, page 166?

A Yes.

Q There are four lines of entry there?

A Yes.

Q One set of entries is for the 22nd and the second set for the 23rd. Would you read those to us,

* * *

DEFENDANT FLOTA EXHIBIT P
Larsen 90

has a regular line of service between the U.S. Atlantic ports and West Coast and North Columbia ports?

A Yes.

Q At Tumaco, and I refer you to the stowage plan, defendant's exhibit C, and please have it in front of you.

A Yes.

Q You loaded lumber?

A Yes.

Q In he number two hold forward part?

A Yes.

Q For discharge at Wilmington?

A Yes.

Q Can you tell us who suggested the loading of the lumber in the number two hold of the vessel?

A Please say again.

Q Who suggested that the lumber at Tumaco be loaded in the number two forward part?

A This matter was discussed between the captain and I, and we decided to load her forward end of number two and the aft end of number four.

Q Could that same cargo have been loaded in the deep tank?

A No. It was big bunkers of timber.

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Larsen 91

Q After you completed loading at Tumaco, you sailed for Buenaventura?

A That's right.

Q Arriving at Buenaventura on what day?

A We sail from Tumaco the 10th of June 0645 and arrived in Buenaventura same day 1810, ten past six.

Q You're reading from the log. Is that defendant's exhibit A for identification?

A Yes.

Q What time did you go alongside the loading pier of Buenaventura?

A We went alongside 0835 the 11th of June.

Q When, for the first time, did Mr. Gooseman who you identified as a ship's clerk employed by Gran-Columbiana, come aboard the vessel?

A It was some time upon our stay in Buenaventura. We stayed there from the 11th until the 16th. So it happened some time during those days. I can't remember how early or how late.

Q On what day did you learn, for the first time, that you were to proceed to Cartagena?

A We knew it for sure --

Q You were advised by Mr. Gooseman of that fact?

DEFENDANT FLOTA EXHIBIT P
Larsen 92

A Yes.

Q Please go ahead.

A We knew it through this Captain Gooseman. We first knew it for sure when we got our departure papers, our clearance for Cartagena. When we got our, as they call it Zarpa.

Q So that you were loading cargo from June 11, 1974 to June 16th?

A Yes.

Q And during all that time do you recall Mr. Gooseman coming aboard the vessel?

A Yes.

Q During that intervening period of time, did he advise you that your next port of call was Cartagena?

A Yes.

MR. McCONNELL: I object to the form of the question.

Q When did you first learn from Mr. Gooseman that you were to call at the port of Cartagena?

A I can't remember the date, but it was one of these days we were loading northbound.

Q Was it on June 11th, the date you commenced to load?

A Could have been. I'm not sure.

Q Were you told the type of cargo by Mr. Gooseman that you were to load in Cartagena?

A Yes. We knew for sure that we were going to load tobacco. You know, these Columbian, a little tobacco. That was the only cargo at the beginning we should pick up.

Q You knew you were going to pick up --

A Tobacco.

Q When, for the first time, did you learn that you were going to pick up yams at Cartagena?

A I heard about these yams upon arrival at Cartagena.

Q Do you know whether the captain knew prior to the vessel's departure from --

MR. McCONNELL: I object.

Q (Continuing) -- Buenaventura that yams were to be loaded at Cartagena?

MR. McCONNELL: Objection to the form.

MR. GIALLORENZI: Please answer the question.

A I don't know whether the captain knew it or not.

Q Did you receive any sailing directions from Grancolumbiana at any time?

A Not me.

DEFENDANT FLOTA EXHIBIT P
Larsen 94

Q When the vessel went on charter from Grancolumbiana, did it receive any instructions from the company, the captain receive any instructions from the company?

MR. D'ORCHIS: If you know.

A Ove Skou?

Q From Grancolumbiana?

A The only thing we got, it was the Charter Party and proceed to New York.

Q I show you this Charter Party dated April 26, 1974, and ask you if that is a true copy of the Charter Party which you received?

A That I can't answer because I haven't seen the original.

Q Well, take a look at it and see if it refreshes your recollection as to whether or not it's a copy of the Charter Party which you saw.

A I have not seen the original Charter Party.

Q You never saw the original?

A No.

Q Did you ever see a copy of the Charter Party?

A No.

Q You never saw a copy of the Charter Party?

A No.

DEFENDANT FLOTA EXHIBIT P

Q So you cannot identify the Charter Party which I have now handed you as a true copy of the Charter Party entered between Flota and Ove Skou?

A No.

MR. GIALLORENZI: I'd like to have this marked as Flota's exhibit 1 for identification.

(Document referred to so marked Defendant Flota's Exhibit 1 for Identification, of this date.)

Q Mr. Larsen, were you told whether or not Grancolumbiana was entitled to have the use of the deep tanks for the purpose of carriage of cargo by anyone connected with Ove Skou?

A I knew that they were entitled to use the deep tanks for general cargo, not for liquid cargo.

Q In other words, you knew that the deep tanks were to be made available to Grancolumbiana?

A Yes.

Q For general cargo?

A For general.

Q Did that, in your opinion, include yams, the stowage of yams in the deep tanks?

A Yes.

Q In other words, you considered yams to be a general or dry cargo, is that --

A That's correct.

Q Had you ever,prior to this particular voyage, carried any commodity similar to yams or fruits or vegetables in a deep tank?

A Yes.

Q What type of commodity did you carry in a deep tank of this nature or variety?

A I have carried bananas -- maybe I misunderstood your question.

Q The question is: Did you ever carry yams or fruits or vegetables prior to this voyage in a deep tank?

MR. D'ORCHIS: Aboard the METTE SKOU?

MR. GIALLORENZI: Aboard any vessel.

A Yes. Oranges, bananas. All kinds of fruit.

Q You carried oranges and bananas in the deep tank?

A Yes.

Q Let's take bananas. How long was th oyage or voyages that you carried bananas in a deep tank?

A That one I'm thinking about was from Santos, Brazil to Buenos Aires, Argentina. That's around, about two and a half, three days.

Q A very short run?

* * *

DEFENDANT FLOTA EXHIBIT P
Larsen 98

tween deck and the port and starboard deep tanks?

A Yes.

Q When, for the first time, did you learn that you were to load yams at Cartagena?

A For the first time for sure, I knew it upon arrival at Cartagena.

Q That's before you commenced to load any cargo in Cartagena, you knew for sure that you had to load in addition to the tobacco, the yams?

A Yes.

Q Who decided to load the yams in the deep tanks rather than the number one upper and lower tween deck and the number five upper tween deck?

A It was the captain.

Q Now, in order to load the yams in the port and starboard deep tanks, it was necessary to remove some coffee?

A About 1000 bags.

Q That was accomplished on June 19th between 1600 and 2300, is that correct?

A That's correct.

Q That was necessary in order to have access to the deep tanks both port and starboard side?

A Yes.

* * *

New York coffee in the wings.

Q Did the captain suggest to you after you learned that you were to load yams in the deep tanks, that coffee should be restowed in the deep tanks and the yams stowed in the tween decks?

A No. We are not talking about that.

Q Did you suggest that to the master of the METTE SKOU that coffee could be restowed in the deep tanks and the yams stowed on the tween decks?

A But we couldn't have the yams on the tween deck because yams was for New York and the coffee there was for Jacksonville.

Q Could you have taken New York coffee out of any of the tween decks and restowed it in the port and starboard deep tanks?

A That would have been possible, but it would hold the ship up.

Q Could the tobacco have been stowed in the deep tanks port and starboard side?

A The tobacco could have been stowed in the deep tank, but the yams took more space than we had in some of the other compartments which would have been free. Coffee and yams -- yams and tobacco in the same hold, that's to make suicide.

* * *

exhibit 1 for identification, did that go to the very bottom of the deep tank?

A Oh, no. It stops a couple of feet above the ceiling.

Q It stops a couple of feet above the ceiling?

A Yes.

Q And the air would be forced down through that intake pipe?

A Yes.

Q How would the air be sucked out; was it sucked out under pressure or just a natural flow?

A Just the same fan that pressed it in, pressed it out again.

Q In other words, there was not a separate fan that would suck that air out?

A No.

Q Now, in your opinion, as the air went down through this air intake pipe shown on plaintiff's exhibit 1 for identification, would it go to the very bottom of the deep tank?

A Yes.

Q And it would have then the effect of coming up again from the ceiling top?

A Yes.

DEFENDANT FLOTA EXHIBIT P

Q So that the pressure of the air would cause it to go down to the bottom of the tank and then it would diffuse and go up out through the air outward pipe?

A Yes.

Q That is it would come out on the weather deck that you have previously described?

A Yes.

Q If there had been a malfunction of the machinary which causes air to go down into the number three deep tank, would you have noted that in your log if there had been a malfunction?

A You mean ventilation stopped by itself?

Q Yes. I'm only talking about the deep tank. If there had been a malfunction of the equipment which causes air to go down into the deep tank. If there had been a breakdown of the equipment which causes the air to go down into the number three port and starboard deep tank, would you have noted that in your log?

A Yes, I think so.

Q Is it one of the requirements that you read in the front of the log to the effect that if there is anything that deals with the carriage of the cargo, that you are required to make a notation of it?

A Nobody ever required us to make notations

DEFENDANT FLOTA EXHIBIT P
Larsen 106

about ventilation.

Q If there was a breakdown of the ventilating machinary, would you have noted that in your log?

A Yes.

Q Is there any notation of any breakdown of the ventilating machinary servicing the number three port and starboard deep tanks in your log for this voyage?

A No.

Q If there had been such a breakdown, would you have noted it in the log?

A Yes.

Q You testified that in order to activate the equipment or machinary which would cause air to flow into the number three deep tank port and starboard, you would push a button?

A Yes.

Q That button that you push, I think you testified you pushed a button in front of the representative of the shipper. That goes to control only that machinary which serviced the number three deep tanks?

A That's two buttons, one for each ventilation, and it only serves one ventilator.

Q So you have two buttons, one that serves the port deep tank and one button that services the starboard

DEFENDANT FLOTA EXHIBIT P
Larsen

deep tank?

A Yes.

Q If you had turned off the other button or if you turned off the ventilation in the general cargo holds, you would only turn off those fans or that equipment that services the general cargo holds and not the deep tanks, is that correct?

A That's correct.

Q In other words, the equipment that would serve the deep tanks would serve independently of the other equipment which ca[illegible] ventilation to flow into the five holds?

A That's correct.

Q The ventilation equipment serving the deep tanks and the five holds were independent of one another?

A Yes.

Q And not inter-dependent, is that correct?

A They are independent.

Q If you had a malfunctioning or breakdown of the ventilation equipment serving the number three deep tanks, how would it manifest itself?

A First of all, you will hear the noise stop.

Q You will hear the noise stop?

A Yes. And secondly, when you go around you

DEFENDANT FLOTA EXHIBIT P
Larsen 108

can see, we call it a control lamp. The control lamp will not light anymore.

Q In other words, you have a panel which has a number of lamps on it which light up when the equipment is functioning?

A Yes.

Q If the equipment should stop, and I'm talking only about the ventilating equipment whether it serves the regular cargo holds or the deep tanks, the light would what, go out?

A Go out, yes.

Q How often did the officer on watch examine this panel where the lights were located?

A This control was done by me.

Q Well, you weren't on watch 24 hours a day, were you?

A Oh, no. No.

Q How could you observe whether or not a light was on or off at a certain period of time if you were not on watch?

A A chief mate is more or less on watch 24 hours a day. You should know how many steps I run around the ship also outside the normal working hours.

Q That I do not doubt.

A But I saw these buttons and I check the ventilation quite frequently.

Q At no time during this trip is it your testimony that you saw any evidence that the ventilating equipment serving the number three deep tanks port and starboard, had stopped?

A No.

Q When this equipment is working, whether it served the deep tanks or the other holds, can you hear the ventilating equipment functioning?

A Yes.

Q You testified that you were in charge of the stowage of the cargo at Cartagena into the deep tanks?

A Yes.

Q And immediately prior to departure I take it you saw the stow and I believe you testified it was about a foot away from the metal plates that ran around the side of the stow, is that correct?

A That's correct. One foot from these and about three feet to the bulkheads.

Q When the ship arrived at New York and they opened up the number three deep tanks, did you observe the condition of the stow at that time?

A It was exactly as it was at the time it was

DEFENDANT FLOTA EXHIBIT P
Larsen 110

loaded. No change.

Q There was no shifting of the cargo?

A No.

Q Prior to arriving at New York, you had the occasion to call at the port of Jacksonville where you opened the number three hold for the purpose of discharging coffee?

A Yes.

Q After you discharged the coffee, did you remove the manhole cover from the number three deep tanks port and starboard?

A Only for inspection.

Q Because you still had cargo, coffee to be discharged at New York?

A Still had coffee in the wings.

Q At Jacksonville, did you go down into the number three deep tanks port and starboard side?

A Yes.

Q What did you observe?

A Nothing. Everything looked normal.

Q You have a flashlight with you?

A I have a flashlight.

Q How much time did you spend in the hold?

A Not very long. A few minutes.

DEFENDANT FLOTA EXHIBIT P

Q Did you observe whether any air was entering the number three port and starboard tanks at that time?

A The air was flowing frequent.

Q Frequently?

A Yes. The whole time. When you were down walking around, you can feel the air coming up through the cartons and go out.

Q What about the times when you visited the deep tanks during the time when the vessel was at sea; did you observe the air flowing through the deep tanks?

A Yes.

Q How much time did you spend in the deep tanks on each occasion while the vessel was at sea?

A Only a few minutes. It takes no more.

Q Did you enter the number three deep tanks at Wilmington, North Carolina, when you discharged the lumber?

A I was in those deep tanks everyday.

Q Every single day?

A Every single day from the time we loaded it until it was discharged in New York.

Q Was there any occasion when you entered the deep tanks, either while the vessel was at port or at sea, that you failed to observe ventilation?

DEFENDANT FLOTA EXHIBIT P
Larsen 112

A Please repeat.

Q When you didn't notice any ventilation?

A In the deep tanks?

Q Yes.

A Notice ventilation everyday.

Q Every time you went in there?

A Yes.

Q At Cartagena you examined 15 to 20 cartons of yams, is that correct?

A That's correct.

Q You noticed that they were wrapped in white paper?

A Yes.

Q Did you take any of the yams out of the paper?

A We wrapped it and put it back again.

Q Did you do that?

A Yes.

Q How many yams did you take the paper wrapping off, re-wrap it and then put it --

A Only a few of them.

Q What did you observe?

A A big potato.

Q Anything else?

A No.

Q Did you take any temperatures of the yams themselves during the voyage?

A No.

Q You didn't take any pulp temperatures?

A No.

Q You usually make it a practice to take pulp temperatures of yams or similar commodities during an ocean trip?

A No.

Q Now, when you arrived at the port of New York on or about July 1st at 0715, at pier three Army Base, I believe you testified that you saw the stow?

A Yes.

Q And they were in the same condition as when they were loaded?

A Yes.

Q Did you observe any odors --

A No.

Q (Continuing) -- emanating from the cargo?

A No.

Q None whatsoever?

A Nc.

Q I ask you to look at your log for July 1st.

DEFENDANT FLOTA EXHIBIT P

When did you first see ~~Captain~~ ~~Hazelton~~ Mister Sebazco BVH of Grancolumbiana when you arrived at New York?

A It was just after arrival.

Q About 7:30 in the morning of July 1st?

A Around 7:30, yes.

Q Is that when you had your conversation with him about removing the yams as fast as possible?

A Yes.

Q There is no entry of that conversation in your log, is there?

A Yes. I have told you before at the beginning of the work we requested to get the yams discharged before anything else, but it was refused.

Q Does it say in the log it was refused?

A Yes.

Q Will you read where it says it was refused? Just tell me the page you're looking at.

A Page number one.

Q I'd like you to again read that for me.

A At the beginning of the work stevedores was requested to discharge from deep tanks. This was not done.

Q Who requested the stevedores?

A I did.

Q Well, that's not requesting ~~Captain~~ Mister Sebazco BVH ~~Hazelton~~.

A No, but he was informed as well.

Q He was informed as well?

A Oh, yes. He was informed to let the stevedores discharge this cargo.

Q You're reading from the log, the smooth log which is marked as defendant's exhibit what?

A B.

Q And that clearly says that you requested the stevedores to discharge the yams, is that correct?

A Yes.

Q That conversation took place about 7:30 in the morning?

A Right.

Q Who was present at that conversation, if you know, if you remember?

A It was ~~Captain Hazelton~~ Mister Sebazco BOTH, the stevedores supervisor, ~~Jack Donahue~~ Jack Flynn BOTH and me.

Q Who refused to unload the yams at that morning, Mr. ~~Donahue~~ Flynn BOTH or ~~Captain Hazelton~~ Mister Sebazco BOTH?

A That was ~~Captain Hazelton~~ Mister Sebazco BOTH because they wanted the coffee out first.

Q And you say you made a notation to that effect that ~~Captain Hazelton~~ Mister Sebazco BOTH refused to have the yams unloaded that morning in your rough log?

* * *

A Yes.

Q Now, again referring to defendant's exhibit A or B, can you tell me when the unloading commenced on July 1st?

A We start discharging 0915.

Q And you ended when?

A The first of July.

Q When did you end?

A We end discharging -- the New York cargo was discharged at 1600 hours the third of July.

Q Turning to July 1st, when did you finish discharging cargo on that day?

A We went on discharging until 5:00 o'clock. 1700 hours.

Q Now, before you could have discharged the yams, was it necessary to unload the coffee destined for New York which was stowed in the number three hatch?

A No. They could go right down to the yams and it was also -- therefore, I asked them to start discharging --

Q The coffee which was destined for New York was stowed in what part of the hold, without looking at the stowage plan?

A They were stowed, block stowed towards -- in

DEFENDANT FLOTA EXHIBIT P
Larsen 121

both wings of number three tween deck on the after part.

Q You said that coffee was stowed in the wings?

A Yes.

Q They could have unloaded the yams on the first day?

A Yes, sir.

Q Was it possible to unload yams and coffee simultaneously on that day?

A Yes.

Q You could unload coffee and yams at the same time?

A Yes.

Q Was this vessel double rigged?

A The vessel was double rigged, yes.

Q Both commodities could be unloaded at the same time?

A Yes.

Q Now, the coffee and the yams were stowed in the after part of the number three hatch?

A Yes.

Q Could the booms in the forward end of the number three hatch serve the after part of the number three hatch?

* * *

MR. GIALLORENZI: For the longshoremen working in the number three hatch or any hatch, for that matter.

MR. D'ORCHIS: I object. We already asked the question.

MR. GIALLORENZI: He volunteered about the safety nets. I have a perfect right to ask him about it. He says you can work in there provided you put safety nets, and I'm asking him isn't that a fact that you have to put up safety nets because you created a dangerous condition.

MR. D'ORCHIS: I object. That's asking for a conclusion of law.

Q What is the purpose of putting up safety nets if you remove a deep tank lid?

A To protect life.

Q If you had not removed the deep tank lids, would it have been necessary to put up safety nets?

A No.

Q On the southbound trip from New York, that's terminated in Buenaventura, did you load any cargo in the deep tanks?

A Yes.

Q Do you know what type of cargo it was?

A General cargo.

Q It didn't require ventilation, did it?

A No.

Q Did you observe the manner in which the cargo was being unloaded by the longshoremen? I'm talking about the cartons of the yams.

A They were discharged on pallets.

Q Any discharged in rope slings?

A No. Pallets.

MR. D'ORCHIS: As far as you know?

THE WITNESS: Yes.

MR. GIALLORENZI: I have no further questions at this time.

MR. CLARK: I have some questions.

EXAMINATION BY MR. CLARK:

Q Mr. Larsen, can you describe the construction of these manhole covers that lead into the deep tanks?

A Oh, yes. It's an oval hole in the tween deck and about four, five inches, a kind of pipe. The pipe is oval but not longer than this.

MR. McCONNELL: Would you call it a collar?

THE WITNESS: Yes, a collar. A steel collar.

A (Continuing) And on top of this steel collar there is a frame about two, three inches wide;

and there you have all the bolts -- all the bolts are welded to this little frame.

Q So the studs are coming out of the collar?

A Yes, like this. And they are placed two, three inches in between all the way around; and the lids have holes. When you put the lid on, the bolts go through the holes and you screw it in.

Q Is the manhole lid hinged or do you have to lift up the handles?

A I have to lift it up. It's not hinged. I have to lift it up.

Q When you go into this tank, do you have to shut the blower off before you go into the tank?

A It's not necessary.

Q When you went into the tank, did you shut the --

A No.

Q When you take this manhole cover off, what happens? Do you notice anything when you take the manhole cover off?

A Yes. If I go down with a jacket on, it flew up around my neck because instead of going through the outlet pipe or the outlet trunk, the air also goes up through the manhole. So every time I went down, I could feel the air flow coming up.

DEFENDANT FLOTA EXHIBIT P
Larsen

Q After you come out of the deep tank, do you have to lift the lid and put it back on? Is there any problem in putting the lid back on over the hole where the air is coming out?

A No, no problem.

Q It's set right down there?

A Yes.

Q These blowers, if you were to have a power failure or say low voltage drop or a power failure, would the motors self-start again or would you have to go down and press the button? Is there a safety feature?

A Yes. The motor does not start by itself. You have to shut them off and you have to push the button to start them again. They will not start by themselves.

Q During the voyage, once the yams were loaded, did you ever have any power failure or blackout on this vessel at all on the trip up; any problems with the generators?

A We have no problems with the ventilation.

Q No?

A No.

Q Just on the main power plant, was there any blackout or any kind of power failure on the voyage?

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Larsen 130

A No.
Q None whatsoever?
A No.
MR. CLARK: I have no further questions.
MR. D'ORCHIS: I have a few more.
BY MR. D'ORCHIS:
Q Mr. Larsen, I believe you testified that you sailed some 20 years aboard the Danish flag vessels?
A 24.
Q How many of those years have you been an officer?
A I have been an officer since '59.
Q From 1959 to date, has it been customary aboard the vessel to enter the temperatures taken in deep tanks when general cargo was carried in those tanks on a daily basis?
A I have never done it in the ships I have been on.
Q Are you aware of whether it is customary among other chief mates sailing under the Danish flags to make such entries, if you can speak of the custom?
A No.
MR. McCONNELL: I object.
Q Is it customary to record the running of the

DEFENDANT FLOTA EXHIBIT P
Larsen 131

ventilators in the deep tanks on a daily basis in the deck log?

MR. McCONNELL: I object to that question.

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Previously you testified where Mr. Giallorenzi asked you about the decision to load the yams at Cartagena, that the decision to load the yams in the deep tanks was made by yourself and the captain, and then you started to say after, and then you were going to qualify it, I believe, but were not given the opportunity. What was the qualification that you were going to make about the decision to load the yams?

A I was just about telling you that these -- this decision made by the captain and me was taken after conversation with the Grancolumbiana representative and the shipper's representative. They were told that this compartment is the only hold we have left for the yams, and they agreed to load it there, and then the captain said to me, Chief Officer, we will load it.

Q And if the Grancolumbiana agent had ordered you to or instructed you to load the yams in number three tween deck rather than in the lower hold, would you have followed those instructions?

A Yes, I would, if there had been any space.

Q With regard to the rough log entry made on July 2nd, the date of discharge at New York of the yams in question, did you make the notation at the bottom of the page with regard to the failure to discharge the yams upon your request?

A I can't remember where I wrote it, but I wrote it down.

Q But the entry was yours?

A The entry was mine, yes.

Q So the entry that is in the original log book which you are now holding and which is identified as defendant's exhibit B for identification, is,to the best of your recollection, an accurate reproduction of the statement as you wrote it in the rough log?

A That's right.

Q And you compared the rough log with the original log and signed that page as well, is that correct?

A That's correct.

Q Now, if the coffee that was in number three tween deck had been placed in the deep tank, either the Jacksonville coffee or the New York coffee or both, would there have been room for the yams aboard the vessel?

A Yes.

Q The yams would have been able to have gone in number three tween deck?

A Yes.

Q But you would not have been able to discharge the coffee beans out of the deep tanks?

A If we had loaded the yams on the after part of number three tween deck, then all the coffee in the deep tanks should have been New York coffee, because otherwise, you have to make shifting of the cargo. That costs alot of money.

Q Do you know if that consideration was discussed with the charterer's agent at Cartagena?

A That, I don't know.

Q Was the stowage of the cargo at Cartagena discussed between the captain and the charterer's agent in your presence?

MR. GIALLORENZI: I object to this line of questioning. The witness has already been asked and answered these questions. You're just repeating.

Q How wide is the sounding pipe that goes down into the deep tank, the diameter of it?

A Two, three inches, that's all.

MR. D'ORCHIS: I have no further questions.

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Larsen 134

BY MR. McCONNELL:

Q As I understand it, Mr. Larsen, from your responses just now to Mr. D'Orchis, the decision made by you and the captain to load the yams in the deep tanks was the last decision made as to the stowage, is that correct?

A That's correct.

Q After other persons had already looked, according to your previous testimony, whoever they were?

A That's right.

Q After the vessel tied up at New York at the army pier, how was ship's power supplied?

A It's done by diesel auxiliary engines.

Q When did you turn the ventilator off in the deep tanks upon your arrival?

A We turned it off on arrival.

Q In other words, it didn't run at all July 1st, did it?

A At the commencement of the discharge of the yams, the ventilation was turned off to the deep tanks.

Q But that didn't start until July 2nd?

A The normal ventilation was turned off on arrival, and the deep tank ventilation was turned off

DEFENDANT FLOTA EXHIBIT P
Larsen 135

at commencement of discharge.

Q You keep trying to make a distinction between the two ventilation systems.

MR. D'ORCHIS: Off the record.

(Discussion off the record.)

Q Where in the log, exhibit A and B, is it indicated that the ventilation to the deep tanks was ever turned on?

MR. D'ORCHIS: That question has been asked. I instruct the witness not to answer it again.

MR. McCONNELL: What is the answer?

MR. D'ORCHIS: He said it's not in the log.

Q Where in the log, exhibit A and B, is it indicated that the ventilation to the deep tanks was ever turned off?

MR. D'ORCHIS: Go ahead and answer it. That wasn't asked.

Do you want the question read back?

THE WITNESS: Yes.

(Whereupon, the question was read back by the reporter.)

A You can't find it in the log book.

Q Just as you can't find it was ever on, right?

DEFENDANT FLOTA EXHIBIT P
Larsen 136

MR. D'ORCHIS: May I also note it was already testified it was customary not to note this information in the deck log. That was previously testified to by Captain Larsen.

MR. McCONNELL: Just answer the question, Captain.

A The ventilation was on all the time.

MR. McCONNELL: That's not responsive to the question.

MR. D'ORCHIS: Please read the question back.

(Whereupon, the question was read back by the reporter.)

A The ventilation was on all the time.

Q Does it appear in the log that it was ever turned on?

A No.

MR. GIALLORENZI: That's been answered a dozen times.

MR. D'ORCHIS: It sure has.

Q What would happen if the METTE SKOU ventilation system pumped outside air with the dew point below the temperature of the dew point in the deep tanks into the deep tanks?

A What will happen?

* * *

DEFENDANT FLOTA EXHIBIT P
Larsen 139

A Yes.

Q And it extended all the way to the bulkhead?

A Yes, but don't forget they are not -- they are not laying close together. They are laying apart from each other. You can climb through it.

Q Were these pieces of dunnage put in there to separate the boxes?

A No. It was to --

Q To brace the stow?

A It was to stabilize the blocks three feet away.

Q Was there a strip of dunnage between every carton?

A That, I don't remember.

Q You say there wasn't any plywood used, is that correct?

A No plywood used, that's right.

MR. McCONNELL: That's all.

MR. GIALLORENZI: Just a couple of questions.

BY MR. GIALLORENZI:

Q When you were at Cartagena prior to loading the yams in the deep tanks, did you and the captain advise the representative of Flota and the shipper, that the deep tanks were suitable for the carriage of yams?

DEFENDANT FLOTA EXHIBIT P
Larsen

A I don't know if the captain ever advised them that it was suitable, but the fact is that they know the deep tanks was the only space and they wanted the yams with the ship.

Q Did you advise the shipper or the representative of Flota that the deep tanks were suitable for carriage of yams?

A No.

Q You consider the deep tanks suitable for carriage of yams?

A Yes.

Q Now, going back to the stowage plan, could any part of the New York coffee have been loaded into the deep tanks number three?

A Yes. We have 3000 -- if we had known that we are going to load these yams, but we did not know that before or almost before we heard about it, before the loading in Buenaventura was completed, we could have moved these 3627 bags down into the deep tanks. That would hold the ship up for one and a half days.

Q At Cartagena you did take out some of the bags of coffee prior to stowing the yams, isn't that correct?

A That is correct.

* * *

DEFENDANT FLOTA EXHIBIT P
Larsen 142

you could put one motor on both deep tanks?

A No. You have one motor per deep tank.

Q Do you know if any electrical work was done on these motors during the voyage?

A No.

MR. CLARK: No further questions.

BY MR. D'ORCHIS:

Q With regard to the dunnaging between the layers of cartons of yams, approximately how many strips of dunnage would there be in the tier?

A That, I can't tell you.

Q But there would be many?

A Oh, be alot, yes.

Q But did all of those strips come out to meet the bulkhead?

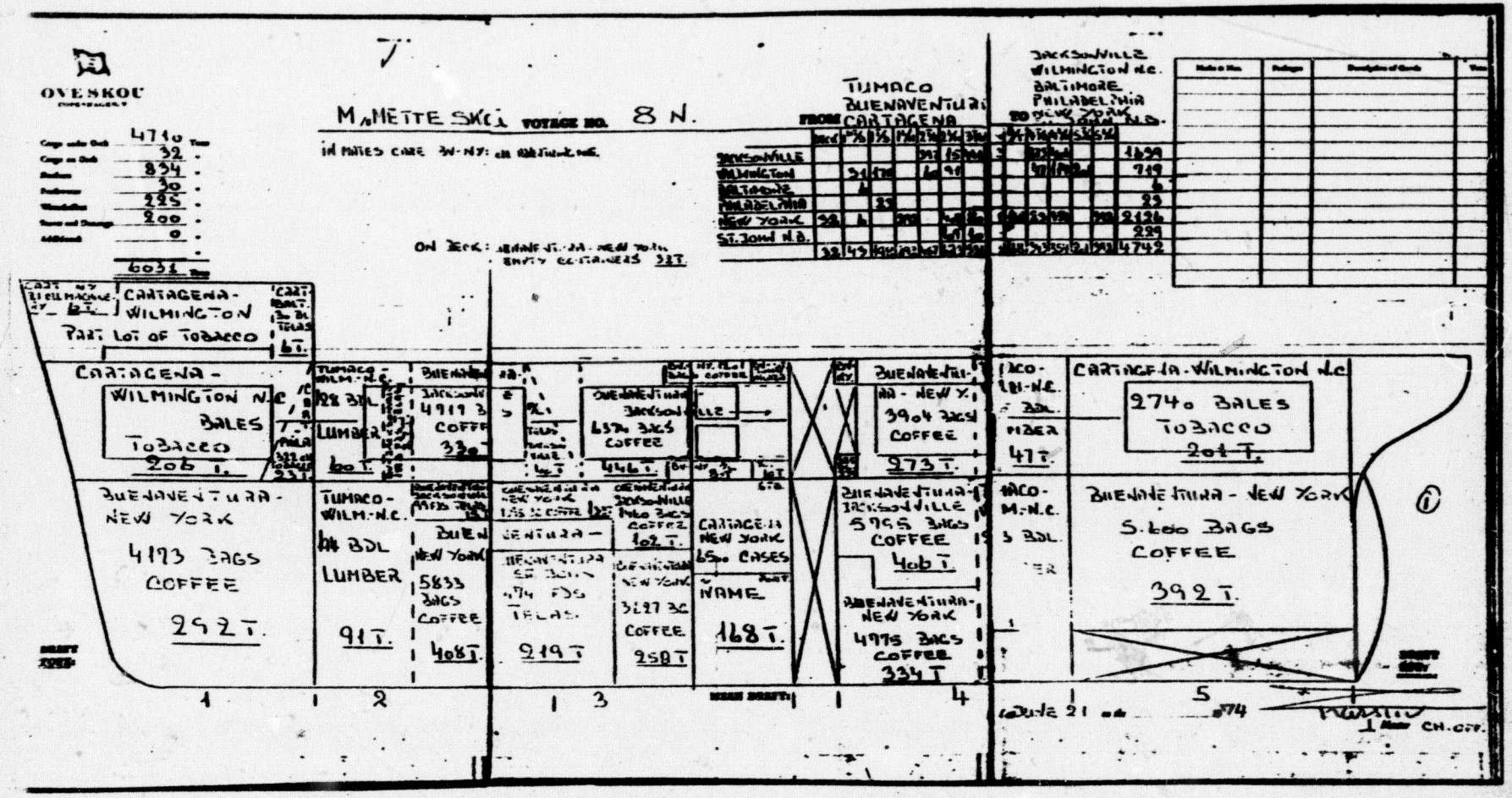
A Not all of them.

Q In other words, how many would come out from a particular tier at a particular level to meet the bulkhead on an average?

A That, I can't tell you, but there was room enough to come around the cargo down there on these walkways. There was not that much dunnage.

Q Dunnage running between the cargo?

A And the bulkhead.



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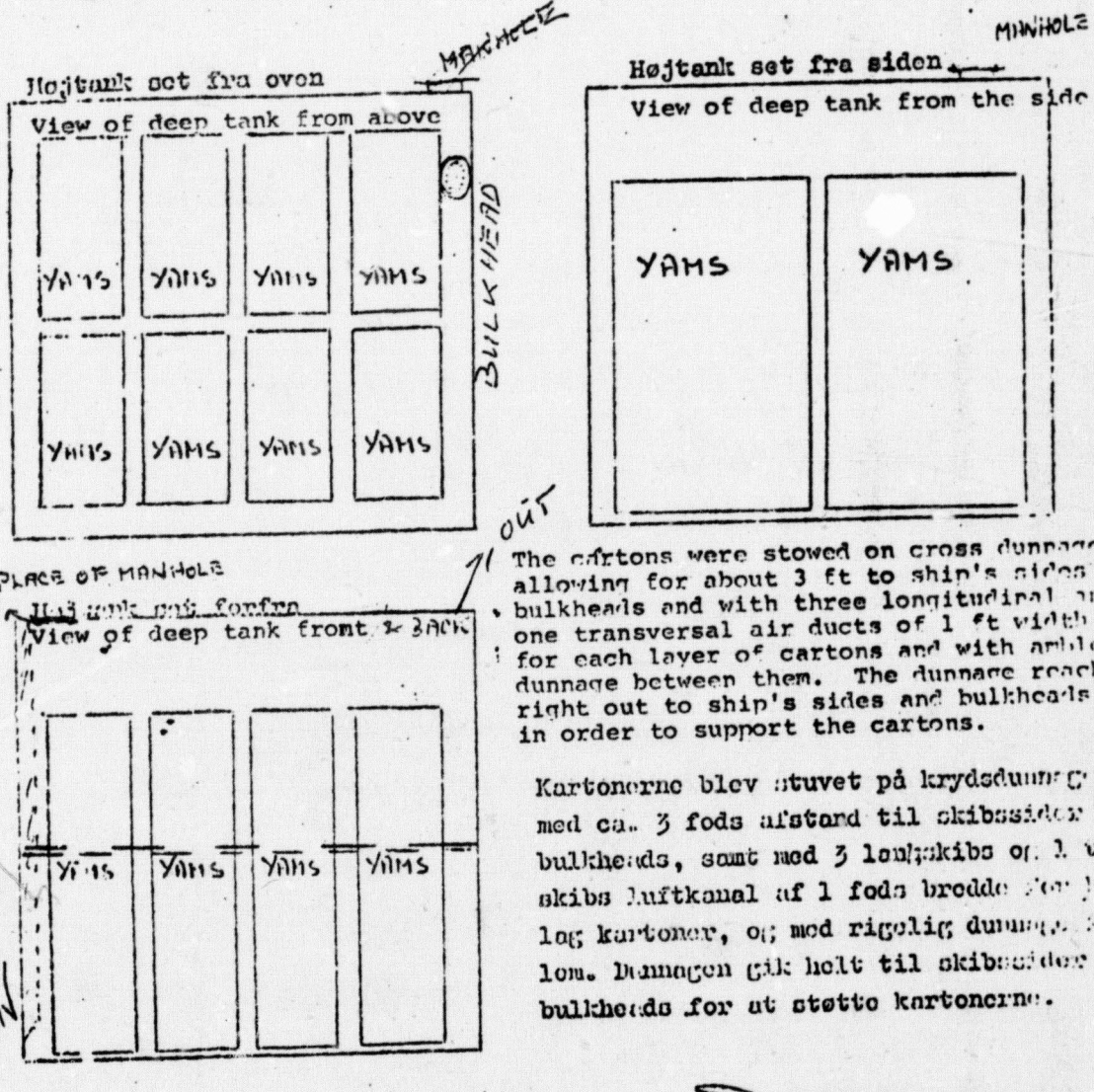
DEFENDANT OVE SKOU EXHIBIT R.

Bilag nr. 2: Skitse over lastens ~~stuvning~~ i M/S "Mette Skous" højtanke.

Enc. No. 2: Sketch of the stowage of cargo in the deep tanks of m.s. METTE SKOU

STARBOARD.



The cartons were stowed on cross dunnage allowing for about 3 ft to ship's sides & bulkheads and with three longitudinal and one transversal air ducts of 1 ft width for each layer of cartons and with ample dunnage between them. The dunnage reaches right out to ship's sides and bulkheads in order to support the cartons.

Kartonerne blev stuvet på krydsdunnage med ca. 3 fods afstand til skibssiderne & bulkheads, samt med 3 langskibs og 1 tværskibs luftkanal af 1 fods bredde for hvert lag kartoner, og med rigelig dunnage imellem. Dunnagen gik helt til skibssiderne og bulkheads for at støtte kartonerne.

DEFT OVE SKOU EX. "D" for ident
4/22/76
A Jay

P.A. Larsen
1. styrmand
chief officer

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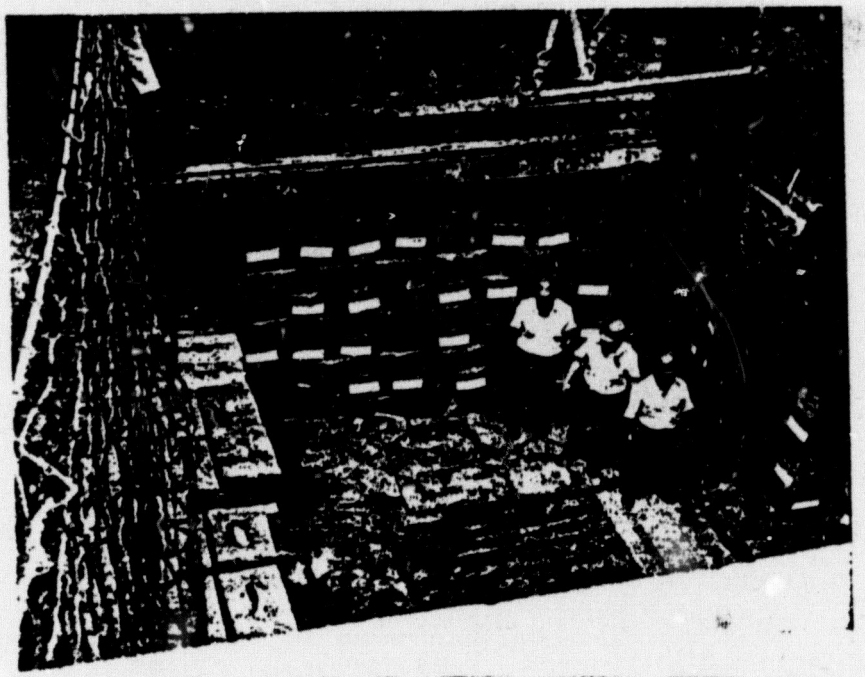
DEFENDANT OVE SKOU EXHIBIT U.

AMERICAN MARINE SERVICES, INC.
Marine & Cargo Surveyors — Consultants

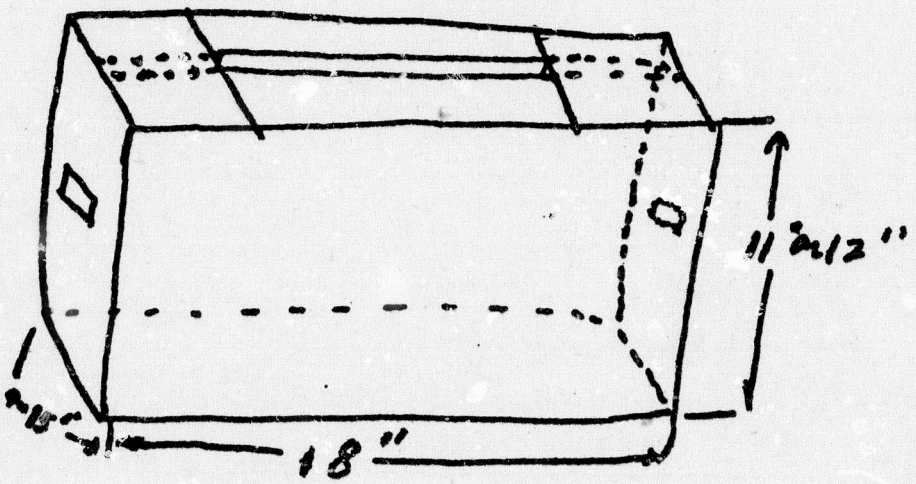
"SANTA CLARA" - Voyage #52
Report No. 4516/76

Photographs No. 18 through 22 showing cartons of plantains ex the No. 6 Lower Tween Deck. Attention is invited to Photograph No. 21 depicting mud smeared cartons and also note no ventilation holes in cartons.



DEFENDANT OVE SKOU EXHIBIT U

DEFENDANT OVE SKOU EXHIBIT V.



ROBERTA LeROCH, CSR

Filed Id.

EXH. A

Deft. Skou Evd.

Date 8/13/75

557a

DEFENDANT I.T.O. EXHIBIT Y.

IN-100

X74-279

INTERNATIONAL TERMINAL OPERATING COMPANY

Damage Report

S/S "Wette Skou" S/S Company Transcolumbrana

Hatch or Pier Location ..... Pier No. 26th St. Brooklyn

Date 7-1-74 Time ..... A.M. P.M. Weather .....

Description of Damage, and How Same Happened

Attached is the O.D. sheet for the above vessel which shows 15 pkgs yarns on the dock out of a 5,000 lot. The broker for consignee was notified by the delivery clerks to pick these pkgs up - but he chose to abandon them & we were forced to discard them.

Damage Verified ..... (Yes or No) By Whom .....

If Cargo, Mark & Nos. .....

B/L or ~~D/R~~ Nos. Cartagena Bag #1 - 5,000 cts yarns.

What Was Final Disposition of Damaged Articles? .....

Can Any Salvage Be Realized? .....

Who Was Notified of This Damage? There were no complaints to the pier on the yarns - vessel or condition of the cargo prior to receiving this notice.

S. Kochanske - Note - attached O.D. was late - amended after delivery of coffee from Bag "A" - which was on the bottom.

~~I (We) Accept Responsibility For Above Damage.~~

SIGNATURE HEAD FOREMAN OR ASSISTANT HEAD FOREMAN

Witnesses ..... Witnesses .....

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

BEST COPY AVAILABLE

558a

DEFENDANT I.T.O. EXHIBIT AA.

METTE SKOU VOY: 8

DOCKED: 7-1-74 — Free Time Expires: 7-12-74

Completed Discharging: 7-3-74 — Date of This Report: 9-11-74

O.S.+D REPORT

B/L Number	KEY In/Out	Consignee	Marks + Numbers	Commodity	Bales Landed	Bales Rec'd	On Dock	Short
3	4/7	Scholtz & Co	Scholtz Medellin 0715/0718	Bags Coffee	1000	961	15	24
4	8/14	— — — —	— — 0707/0714/M	— —	1750	1722	3	25
5	15/23	— — — —	3482/88. 90 — — 6101/04	— —	2250	2214	36	
8	29/31	Colombian Coffee Co.	4125 DUQUE 4178/79	— —	1500	1486	14	—
10	34/5	Armenia Coffee Co.	Rafael 6105 Armenia 7102	— —	500	490	10	—
11	36/39	— — — —	— — 2106/07 — — 7125, 7127	— —	2000	1983	—	17
12	40/44	— — — —	— — 2063, 7694, 246 — — 7111, 7113	— —	2500	2488	3	9
13	45/49	— — — —	— — 2104/05 — — 7108, 7110	— —	2500	2485	9	6
16	54/58	Imperial Commodities	Gonchevari 6167 Armenia 6170, 6171 6172, 6183	— —	1123	1067	56	10
17	59/64	Scholtz & Co.	Gonchevari Medellin 2475/2480	— —	1500	1486	6	8
18	65/72	Volkart Bros	— — — — 2503/2510	— —	2000	1960	15	25
19	73	S J Rullns	San Jose Armenia 1546	— —	250	241	3	6
20	74/83	Volkart Bros	— — 1154, 1160, 1162 — — 1168, 1170 1179/80	— —	2500	2456	28	16
21	84/93	Volkart Bros	— — 1169, 1184, 1188 — — 1192/93, 95, 99, 1200	— —	2500	2468	3	29
Cartagena 1	95	Vada Trading	Andino	Cans Jams	5000	4982	18	
			Bags Coffee on Hand to be Used Against Shortages					
			DUQUE 4176				1	
			4156				3	
			8244				1	
			LIB CCIA 415				1	
							(6)	

18 Bags Coffee Sweeps

"A Corree and general cargo.

"Q I show you this document, Mr. Larsen, and ask you whether this was the stowage plan for the voyage which we are concerned with here.

"A That is correct. I made it myself.

"Q Is it an accurate Xerox as best as you can recollect?

"A It is.

"Q When the vessel had completed at Buenaventura, what spaces were left for loading cargo at future ports?

"A As far as I remember, it was number 1 lower 'tween deck, number 1 upper 'tween deck, and number 5 'tween deck and the deep tanks.

"Q How many hatches were there aboard the Mette Skou?

"A Five hatches."

At page 7, your Honor.

"Q When was the first time you were informed with regard to the shipment of yams to be carried aboard?

"A In Buenaventura.

"Q By whom were you informed?

"A The ship's clerk. The man was Gooseman.

"Q When you say 'the ship's clerk' --

"A He was the one who did the service between the

Grancolombiana and the ship.

"Q Was he employed by Grancolombiana?

"A Yes.

"Q And Grancolombiana was the charterer of the vessel?

"A Grancolombiana was the charterer of the vessel.

"Q Had you been informed previous to Buenaventura of other cargo to be carried and loaded at Cartagena?

"A Yes. We were informed about the tobacco.

"Q What time were you informed about the tobacco?

"A Before sailing.

"Q Before sailing from Buenaventura?

"A Yes.

"Q Were you informed by Mr. Gooseman where the charterer intended to stow the tobacco and the yams at Cartagena?

"A No."

At page 10:

"Q Were you contacted by the charterer's agent at Cartagena?

"A Yes.

"Q On what date were you contacted?

"A It was on the day of arrival."

At page 11:

"Q Did you discuss the stowage of goods to be loaded at Cartagena with him?

"A I did not, but the captain did.

"Q Did the captain thereafter confer with you regarding stowage at Cartagena?

"A Yes.

"Q What did the captain say to you?

"A We are going to load tobacco in number 1 and number 5 'tween decks and the yams in the deep tanks.

"Q Did you receive a stowage plan from the captain at Cartagena?

"A No.

"Q Were you thereafter contacted by anyone else with regard to stowage aboard the vessel of the yams?

"A Prior to loading, the representative of the shipper, he came down to me on the weather deck, hatch number 3, and asked me, 'Is this the only space you have for yams,' and I could say only yes, and then --

"Q Do you recall the name of the representative of the shipper?

"A No."

Page 13:

"Q What did you thereafter do with the representative of the shipper?

"A I took the representative with me to the 'tween deck and showed him the deep tanks and I showed him where the ventilation was, where the input and where the output was, and I showed him the push-buttons and I pressed them in the deckhouse, the forward deckhouse, and he saw the light was on; and I took him to the ventilation itself and the fan was on and the air came in and he assured himself that the air came out."

THE COURT: Who was this that he took around?

MR. GIALLORENZI: The shipper's representative, your Honor.

Page 15:

"Q Did you talk with the captain about the stowage of the yams after you conferred or spoke with the shipper's representative?

"A The captain told me the yams to go --

"MR. McCONNELL: I object to the answer.

"Q What did the captain tell you?

"A The yams have to go into the deep tank.

"Q Were the yams thereafter loaded into the deep tanks of the vessel?

"A Yes.

"Q Did you receive any objections with regard to the stowage of yams in the deep tanks during the stowage?

"A No.

"Q And after the stowage?

"A No."

This is page 17:

"Q Did anyone from either the shipper or the charterer inspect the stowage of the yams during or after the stowage?

"A The shipper's representative was on the 'tween deck all the time.

"Q Do you know if the agent for the charterer was aboard the vessel during the stowage of the yams?

"A That I don't remember.

"Q Do you recall if the agent for the charterer came aboard the vessel after the stowage of the yams prior to the sailing of the vessel?

"A He came on board prior to the vessel's sailing, yes."

Question on page 18:

"Q Do you know if the charterer's agent inspected the stow?

"A He did not.

"Q Did you speak to the charterer's agent after the yams were loaded personally?

"A Yes, but we were not discussing the stowage of

yams. Just normal conversation about departure and about the other loading."

Page 23:

"Q Were the cartons palletized?

"A No. Loose cartons.

"Q Can you describe for us how the cartons were stowed in the deep tanks?

"A They were stowed -- I make the plan and they were stowed on cross-dunnage, as we call it."

Page 24:

"Q Now, with regard to this sketch, Mr. Larsen, the tiers of cartons of yams which you show four tiers in this sketch, with regard to the view from the front, were the boxes of yams separated by dunnage?

"A Each lay was separated by what we call flat dunnage. -

"Q Can you describe what kind of dunnaging was used?

"A It was wood.

"Q What was the width of the dunnage?

"A Approximately 1 inch by 4 inch, 5 inches, and the length depends on --

"Q Do you know who provided the dunnage?

"A Grancolombiana provided. We had it on board

actually.

"Q What was the distance between the outside of the tiers of boxes and the bulkhead?

"A About 3 feet."

Page 26:

"Q Between each of the tiers I notice that there is an aisle.

"A Yes. We had one longitudinal aisle and three athwartships. All of them were about 1 foot wide.

"Q The aisle was clear from the floor to the ceiling?

"A Yes, broken once in a while by the flat dunnage."

Page 27:

"Q Was there access for a person to go down into the deep tanks after the yams were stowed?

"A Yes.

"Q How was that provided?

"A Through the manhole to the tank tops.

"Q Do you know if those manhole covers were left open during the voyage?

"A They were left open."

Page 28:

"Q Is that a ladder?

"A That is a fixed ladder.

"Q That is true in both port and starboard deep tanks?

"A Yes.

"Q Was the stow in the starboard and port deep tanks identical?

"A Yes. Half and half."

Page 33:

"Q Do you recall or do you see any notations by yourself that the temperatures in the deep tanks exceeded the outside air temperatures for the entire voyage?

"A No.

"Q How were the ventilators operated throughout the entire voyage?

"A For the deep tanks the ventilation was on all the time.

"Q That is twenty-four hours?

"A Twenty-four hours a day.

"Q That is forced ventilation that was on?

"A Forced ventilation.

"Q Did you see where the yams were placed after they were discharged from the vessel?

"A Yes. They were placed in a locker in the shed, inside the shed."

At page 41:

"Q Please explain how the yams were stowed in the she

"A The yams were just stowed in one block, one big block.

"Q Did you notice if dunnage was used?

"A No dunnage was used.

"Q Was there any means of forced ventilation provided?

"A No.

"Q Do you recall whether any of the yams were picked up by truck while you were aboard the vessel in New York?

"A No."

Page 43:

"Q Do you recall having written a letter of substance of which is similar or identical to that which is typed here? Please review it carefully.

"A That's correct. That is the translation of my letter.

"Q Where did you prepare that letter?

"A That letter I prepared on board the Dagny Skou in the port of Yokohama, Japan.

"Q What date, approximately?

"A I don't know.

"Q Do you know if the letter was prepared subsequent to the voyage in question aboard the Mette Skou,

375—Affidavit of Service The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

NEW YORK SUPREME COURT APPELLATE DIVISION DEPARTMENT

U.S. COURT OF THE APPEALS FOR THE SECOND CIRCUIT

VANA TRADING

VS

SS METTE SKOU

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, SS:

AFRIM HASKAJ being duly sworn,

deposes and says that he is over the age of 21 (18) years and resides at 1481 [illegible]nd st Bklyn NY

That on the fifth day of November, 1976 at

he served the annexed appendix upon

Haight, Gardner, Poor & Havens, One State Street Plaza, NY, NY

Hill Rivkins Carey Loesberg & O'Brien, 96 [illegible]ulton Street, NY, NY

Purrington & Mc Connell, 40 Wall Street, NY, NY

in this action, by delivering to and leaving with said attorneys

two true cop thereof.

DEPONENT FURTHER SAYS, that he knew the perso[illegible] so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this fifth

day of november 1976

Roland W. Johnson

Afrim Haskaj

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977